

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

NO. 100

WILLIAM J. BRYAN, DISTRICT ATTORNEY

OF THE STATE OF ILLINOIS

VS.

JOHN D. SEVERSON

(27,263)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 508.

JOHN W. SCOTT, WILLIAM J. HOWE, O. B. SEVERSON,  
ET AL., APPELLANTS,

*vs.*

LYNN J. FRAZIER ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NORTH DAKOTA.

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1 In the United States District Court for the District of North Dakota, Southeastern Division.

JOHN W. SCOTT, WILLIAM J. HOWE, O. B. SEVERSON, L. A. WOOD, Nels Nichols, George Sidener, Emil Scow, W. C. Martin, Henry McLean, George P. Holmnes, B. W. Hersey, T. W. Baker, George Christenson, R. H. Levitt, E. J. McGeath, E. A. Anderson, T. B. Oakley, O. F. Bryant, George D. Elliott, John Satterlund, P. S. Chaffee, Alfred Thuring, J. S. Garnett, J. E. Baker, John R. Early, H. C. Johnson, John C. Leach, Fred Steckner, Fred L. Roquette, Iver K. Bakken, Michael Toay, J. L. Harvey, William Burnett, Nathan Upham, Orlando Brown, J. O. Hanchette, W. W. Wilde, Arlo Andrews, Duncan Brownlee, W. W. Cofell, E. B. Roscoe, C. H. Kinney, on Behalf of Themselves and All Other Taxpayers of the State of North Dakota, Plaintiffs,

VS.

LYNN J. FRAZIER, WILLIAM LANGER and JOHN N. HAGEN, Acting and Pretending to Act as the Industrial Commission of North Dakota; Lynn J. Frazier, Carl Kozitsky, William Langer, Obert Olson, and Thomas Hall, acting as the State Auditing Board; Lynn J. Frazier William Langer, Thomas Hall, Carl Kozitsky and Minnie J. Nielson, constituting and acting as the Board of University and School Lands; Obert Olson, as State Treasurer of the State of North Dakota; Carl Kozitsky, as State Auditor of the State of North Dakota, and Lynn J. Frazier, as Governor of said State; William Langer, as Attorney General of said State; John N. Hagen, as Commissioner of Agriculture and Labor of said State; Thomas Hall, as Secretary of State of said State, and Minnie Nielson, as Superintendent of Public Instruction of said State; and Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky, Obert Olson, John N. Hagen, and Minnie J. Nielson, individually, Defendants.

Pleas Before the Honorable Charles F. Amidon, Judge of the United States District Court for the District of North Dakota.

Be it remembered that on the 2nd day of April, 1919, a Bill of Complaint was filed in this action, which bill of complaint is in words and figures following, to-wit:

2 *Bill of Complaint.*

To the Honorable, the Judge of the District Court of the United States for the District of North Dakota:

The plaintiffs above named, bring this, their bill of complaint against the defendants above named, and thereupon complain and allege:

## I.

That said plaintiffs are each and all citizens of the United States and of the State of North Dakota, and that their names, and the counties of their residence in the said State are as follows:

John W. Scott, Grand Forks County; William J. Howe, Cass County; O. B. Severson, Adams County; L. A. Wood, Barnes County; Nels Nichols, Billings County; George Sidener, Bottineau County; Emil Scow, Bowman County; W. C. Martin, Burke County; Henry McLean, Cavalier County; George P. Holmes, Divide County; B. W. Hersey, Eddy County; T. W. Baker, Foster County; George Christensen, Golden Valley County; R. H. Levitt, Grant County; E. J. McGeath, Hettinger County; E. A. Anderson, Kidder County; T. B. Oakley, LaMoure County; O. F. Bryant, Logan County; George D. Elliott, McHenry County; John Satterlund, McLean County; P. S. Chaffee, Mercer County; Alfred Thuring, Nelson County; J. S. Garnett, Pembina County; J. E. Baker, Ramsey County; John R. Early, Richland County; H. C. Johnson, Sargent County; John C. Leach, Sioux County; Fred Steckner, Slope County; Fred L. Roquette, Stark County; Iver K. Bakken, Steele County; Michael Toay, Stutsman County; J. L. Harvey, Towner County; William Burnett, Traill County; Nathan Upham, Walsh County; Orlando Brown, Ward County; J. O. Hanchett, Wells County; W. W. Wilde, Williams County; Arlo Andrews, Cass County; Duncan Brownlee, Cass County; W. W. Cofell, LaMoure County; E. B. Roscoe, LaMoure County; C. H. Kinney, LaMoure County.

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## II.

That the defendants are citizens of the United States and of the state of North Dakota, and are the duly elected, qualified and acting officers of the said state, as follows: Lynn J. Frazier, Governor, William Langer, Attorney General, John N. Hagen, Commissioner of Agriculture and Labor, Obert Olson, State Treasurer, Carl Kozitsky, State Auditor, Thomas Hall, Secretary of State, and Minnie J. Neilson, Superintendent of Public Instruction.

## III.

That under section 375 of the Compiled Laws, North Dakota, 1913, the said Lynn J. Frazier as Governor, Carl Kozitsky as State Auditor, William Langer, as Attorney General, Obert Olson as State Treasurer, and Thomas Hall as Secretary of State, constitute the State Auditing Board, and as such Board, audit all claims against the State prior to the issuance of the State Auditor's warrant on the Treasurer in payment thereof.

## IV.

That under Section 156 of the Constitution of North Dakota, Lynn J. Frazier as Governor, William Langer, as Attorney General,

Thomas Hall as Secretary of State, Carl Kozitsky as State Auditor, and Minnie J. Neilson as Superintendent of Public Instruction constitute the Board of University and School Lands, and as such have control of the investment of the permanent school fund of the state derived from the rental and sale of all school and university lands given to the state in trust by the United States for the support of public schools; and under section 162 of the State Constitution are authorized to invest such funds in State Bonds. That said fund now consists of \$919,730.16 in cash, \$10,276,964.99 in municipal bonds, \$5,661,253.61 in loans secured by farm mortgages on property within the state of North Dakota; and in addition thereto a large acreage of lands and deferred payments upon land sale contracts, of such value that the total amount of cash, bonds, mortgages, lands and contracts exceed in value the sum of \$50,000,000.00

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## V.

That Obert Olson as State Treasurer is the custodian of the state's funds derived from taxation, and is also custodian of the state school fund, and disburses such school fund upon warrants drawn by the State Auditor.

## VI.

That Carl Kozitsky as State Auditor directs the disbursement of the State funds by warrants upon the State Treasurer in payment of moneys directed by law to be paid out of the treasury, and by his warrant directs the payment of the permanent School fund.

## VII.

That under the pretended authority of House Bill No. 17, passed by the Sixteenth Legislative Assembly of the State of North Dakota, which in form took effect on February 26th, 1919, and which is hereinafter set out in full, the defendants, Lynn J. Frazier, as Governor, John N. Hagen, as Commissioner of Agriculture and Labor, and William Langer as Attorney General claim and pretend to constitute the Industrial Commission of North Dakota, and have organized, and are now acting as such Commission.

## VIII.

That plaintiffs are taxpayers of the State of North Dakota and are owners of both real and personal property in this state, and in the counties of their residence, which is subject to taxation to meet the obligations of the state, and also subject to local taxes. That the plaintiffs, and the other taxpayers of the state of North Dakota are the beneficial owners, subject to taxation to meet the obligations of the state, and also subject to local taxes. That the plaintiffs, and the other taxpayers of the state of North Dakota are the beneficial owners, subject to the legal and proper use thereof

by the state of North Dakota for state purposes, of all moneys and funds now in the treasury of the state of North Dakota, collected by taxation for the purpose of defraying the expenses of the government of the state, and which funds are held and controlled by the defendants, as officers of the state, as hereinbefore described. That said funds are held in trust by the defendants in their official capacity, for the plaintiffs and the other taxpayers of the

5 state. That said funds now amount to more than three hundred thousand dollars. That from time to time additional sums of money, amounting to hundreds of thousands of dollars each year, raised by taxation against the property of plaintiffs, and the other taxpayers of the state of North Dakota, are being collected and covered into the Treasury of the state, for the purpose of defraying the legitimate expenses of the state government, and the defendants, in their official capacity aforesaid, come into the custody and control of said moneys as the same are collected as hereinbefore set forth. That the state of North Dakota has no moneys, funds, or property, aside from that collected by the taxation of the property of the plaintiffs and the other taxpayers of the state, except moneys realized from school and institutional lands granted to the state by the United States at the time of admission to the Union. That said school and institutional lands and moneys realized therefrom cannot, under the compact with the United States, be used for any purpose other than the maintenance and support of the schools and institutions of learning of the state and for the purpose of maintaining and supporting other public institutions of the state.

That the plaintiffs bring this action as taxpayers on behalf of themselves and on behalf of the other taxpayers of the state who are many thousand in number, and who have a common and general interest in the questions presented in this case, and are so numerous as to make it impracticable to bring them all before the court.

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## IX.

This is a suit in equity between the plaintiffs and the said defendants, and arises under the constitution and laws of the United States, as hereinafter will more particularly appear; and involves, exclusive of interest and costs, a sum or value in excess of \$300,000.00 of moneys now in the treasury of the state of North Dakota, derived from taxation of property and persons in said state, and \$17,000,000.00 in bonds of the state of North Dakota, to be issued as hereinafter set forth, which said bonds, if permitted to issue, create a charge upon the property of the state of North Dakota, which must be met by the taxation of the people and property of said state; and that each of the matters in controversy in this action, exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and that each of said matters arises under the constitution and laws of the United States.

## X.

That the defendants, assuming and claiming to act as officers of the state, and in an official capacity, and under the pretended au-

thority of certain amendments to the state constitution of North Dakota, which are claimed to have become effective on or about February 1st, 1919, and certain pretended acts of the Sixteenth Legislative Assembly of North Dakota, which in form took effect on the 26th day of February, 1919, all of which are hereinafter set out, threaten to divert, pay out and transfer, and unless restrained and enjoined by this court, will pay out, divert and transfer from the general funds of the state, and from funds of the cities, villages, townships and school districts of the state derived from taxation, and from the permanent school funds of the state, large sums of money in the purchase of the bonds herein referred to and for other unlawful purposes; and threaten to create and issue, and unless restrained and enjoined by this court, will create and issue, obligations of the state in the form of state bonds, aggregating in amount the sum of \$17,000,000.00 for unlawful purposes, and threaten to negotiate and sell, and unless restrained and enjoined by this court, will negotiate and sell said bonds, and will pledge the faith and credit of the state of North Dakota for the payment thereof.

## XI.

The defendants justify the acts of which complaint is made in this action by the alleged amendments to the state constitution approved on or about February 1st, 1919, and the pretended acts of the Sixteenth Legislative Assembly, approved February 26th, 1919, referred to in paragraph "X" hereof.

## XII.

That prior to 1914, all constitutional amendments were initiated by the Legislature subject to the approval of the electors, such amendments being governed by section 202 of the state constitution, which in part read as follows:

"Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting

thereon, such amendment or amendments shall become a part of the constitution of this state."

In 1914, Section 202, just quoted, was amended by adding thereto the following, in substance:

"Any amendment or amendments to this Constitution may also be proposed by the people by an initiative petition. When such petition has been properly filed the proposed amendment or amendments shall be placed upon the ballot to be voted upon by the people at the next general election. Should any such amendment or amendments proposed by initiative petition and submitted to the people receive a majority of all the legal votes cast at such general election, such amendment or amendment shall be referred to the next Legislative assembly; and should such proposed amendment or amendments be agreed upon by a majority of all the members elected to each House, such amendment or amendments shall become a part of the Constitution of this state."

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## XIII.

Prior to February 1st, 1919, Section 185 of the State constitution was in force and read as follows:

"Neither the state nor any county, city, township, town, school district, or any other political subdivision shall loan or give its credit or make donation to or in aid of any individual, association or corporation except for necessary support of the poor; nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work of internal improvement unless authorized by a two thirds vote of the people, Provided, that the state may appropriate money in the treasury or to be thereafter raised by taxation for the construction or improvement of public highways."

That on or about February 1st, 1919, the foregoing section was in form amended to read as follows:

"Section 185, Article 12 as amended by Article 18 of the amendment. The state, any county or city may make internal improvements and may engage in any industry, enterprise or business not prohibited by Article 20 of the Constitution (the manufacture and sale of intoxicating liquor), but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation, except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

## XIV.

That prior to February 1st, 1919, the state debt limit was fixed by Section 182 of the state constitution, at \$200,000, which so far as material, follows:



"The state may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota, at the time of the adoption of the Constitution. \* \* \* No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense, in case of threatened hostilities."

That said Section 182 of the constitution was in form amended on or about February 1st, 1919, to read as follows:

"Section 182 in Article 12. The state may issue or guarantee the payment of bonds, providing that all bonds in excess of two million dollars shall be secured by first mortgages upon real estate in amounts not to exceed one half of its value; or upon real estate or personal property of state owned utilities; enterprises or industries, in amounts not exceeding its value, and provided, further, that the state shall not issue or guarantee bonds upon property of state owned utilities, enterprises or industries in excess of ten million dollars. No future indebtedness shall be incurred by the state unless evidenced by bond issue, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provisions sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax, or of such other provision for the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for the public defense in case of threatened hostilities.

#### XV.

That the pretended amendments to Section- 182 and 185 of the State Constitution hereinbefore set out, and the acts of the legislature of the state of North Dakota, adopted in pursuance and under the pretended authority thereof and referred to herein are void and of no force or validity, for the following reason, among others, to-wit: That said constitutional amendments were submitted and voted upon at the general election held in the fall of 1918, and did not receive a majority of all the legal votes cast at such election.

#### XVI.

That the Sixteenth Legislative Assembly of the state of North Dakota, after in form approving the constitutional amendments hereinbefore referred to, and for the purpose of carrying out the



Industrial program thereunder and therein authorized, passed the following acts, all of which were declared adopted by sufficient vote to place them in operation on their approval, and which said pretended acts were approved on February 26, 1919, to-wit: House Bills 17, 18 and 49, and Senate Bills 130, 20, 75 and 19.

### XVII.

That the several legislative acts above referred to and here in question, for convenience of reference will hereafter be referred to as follows:

House Bill 17, as "The Industrial Commission Act."

House Bill 18, as "The Bank of North Dakota Act."

House Bill 49 as "The Bank of North Dakota Bond Act."

Senate Bill 130 as "The Bank of North Dakota Real Estate Bond Act."

Senate Bill 20 as "The Mill and Elevator Association Act."

10 Senate Bill 75 as "The Mill and Elevator Association Bond Act."

Senate Bill 19 as "The Home Building Act".

Which said acts are now set out in full in the order in which they are above named.

(Note: For convenience of reference the seven Legislative Acts above described, which are a part of this paragraph, are placed at the end of the bill in this transcript.)

### XVIII.

That the amendments to sections 182 and 185 of the constitution, hereinbefore set out, and the acts of the legislature set out in the preceding paragraph, purport and pretend to authorize the state of North Dakota to enter into private industries, enterprises, and business projects, such as general banking, buying, selling and handling grain, owning and operating elevators and flour mills, home building, and general real estate loan business, general merchandising, and other business of every character and description.

### XIX.

That the defendants, Lynn J. Frazier, William Langer, and John N. Hagen, officers of the state of North Dakota, as aforesaid, claiming to act under the provisions and authority of the said constitutional amendments and the Industrial Commission Act. hereinbefore set forth, have organized as, and now claim to be a lawfully organized body under the name of "The Industrial Commission of North Dakota." That said commission and said persons acting and claiming to act as such Industrial Commission as aforesaid, unless enjoined and restrained by order and judgment of this court, will expend large sums of money of the state of North Dakota, being funds and moneys raised by taxation against the people and prop-

erty of the state of North Dakota, to-wit: in excess of the sum of \$400,000.00, and that such expenditures have already commenced and will continue until the appropriations available therefor have been expended. That such expenditures generally will be made on account of and for the following purposes:

That said commission and the members thereof as aforesaid, have employed a secretary of the said commission at a salary of \$3600 per annum, and are threatening to, and will engage in and undertake all of the different enterprises and business projects specially provided and under the said acts of the legislature hereinbefore set forth, and have commenced the organization of the said special businesses so referred to in the acts of the legislature hereinbefore set forth, and will expend the full amount of the appropriations provided in said Industrial Commission Act, to-wit, the sum of \$200,000.00.

That the said Industrial Commission and the members thereof as aforesaid, have begun proceedings for the organization and development of the Bank of North Dakota, as provided for in the Bank of North Dakota Act, as hereinbefore set forth, and have employed a bank expert to assist in the further work of the organization and operation of said bank, at a salary of \$5000 per annum, and unless restrained and enjoined by this court, will continue in the establishment and operation of said bank without interruption until the full sum of the appropriation provided for in said act, to-wit, \$100,000.00, is fully expended.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this court, will proceed immediately to carry out the provisions of the Bank of North Dakota Bond Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to-wit, the sum of \$10,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this court, will proceed immediately to carry out the provisions of the Bank of North Dakota Real Estate Bond Act as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said act, to-wit, the sum of \$10,000.00.

12 That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this court, will proceed to establish a system of warehouses, elevators, flour mills, factories, plants, etc., within and without the state of North Dakota, and will employ managers, agents and others in the operation and carrying on of said warehouses, elevators, flour mills, factories, etc., at great expense to the state of North Dakota, and will acquire property within the state of North Dakota, for the purpose of establishing such enterprises as aforesaid, and as described and set forth in the Mill and Elevator Association Act as hereinbefore recited, by purchase or by virtue of the law of eminent domain, and at great expense to the

state of North Dakota, and will enter upon the business of manufacture, storage, sale, exchange and other methods of acquiring and disposing of all kinds of manufactured and raw farm food products and by-products, and will do all other acts and things authorized or attempted to be authorized in and by the provisions of said Mill and Elevator Association Act, and in the doing thereof, will expend the full amount of the appropriation provided for in said act, which said appropriation amounts to the sum of more than \$100,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this court will proceed immediately to carry out the provisions of the North Dakota Mill and Elevator Association Bond Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to-wit: the sum of \$10,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this court, will proceed immediately to carry out the provisions of the Home Building Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to-wit: the sum of \$100,000.00.

13 That if the defendants herein named are permitted to use the public funds of the state of North Dakota as threatened and herein set forth, a deficit of public moneys and funds required for the purpose of meeting the expenses of the state government will be created, amounting to the sum of the appropriations aforesaid, to-wit, \$400,000.00, and that in the event of such deficit, the same would have to be restored by taxation upon the property of the plaintiffs and the other taxpayers of the state.

20.

That unless enjoined and restrained by the order and judgment of this court, the said defendant Obert Olson as State Treasurer aforesaid, will immediately prepare for issue, and the said Lynn J. Frazier as Governor aforesaid, and the said Obert Olson as State Treasurer aforesaid will execute and issue negotiable bonds of the state of North Dakota in the aggregate amount of two million dollars under the pretended authority of the Bank of North Dakota Bond Act, as hereinbefore set forth, and Thomas Hall, Secretary of State will attest the same, and with Carl Kozitsky, State Auditor, will certify to said bonds so executed, as provided in said Bank of North Dakota Bond Act, which said bonds are and will be known and designated as Bonds of North Dakota, Bank Series, and thereupon said bonds will be delivered to the Industrial Commission hereinbefore referred to, and will be by said Commission and the members thereof, as hereinbefore designated and referred to, negotiated and sold, thereby creating a liability against the state of North Dakota in the sum of two million dollars, which said liability can only be met and liquidated by moneys raised by taxation against the people

and property of the state of North Dakota, and which moneys thus raised and said liability thus created will be for a private business enterprise, and contrary to, and in violation of the rights of these plaintiffs and all other taxpayers in the state of North Dakota, and in violation of the fundamental principles of a republican form of

14 government and the constitution of the United States.

That the said defendants above named, and in this paragraph referred to, unless enjoined and restrained by the order and judgment of this court, will in the same manner as herein set forth, execute, issue, attest and certify bonds of the state of North Dakota under the provisions of the Bank of North Dakota Real Estate Bond Act hereinbefore set forth in the aggregate amount of ten million dollars, to be known as Bonds of North Dakota, Real Estate Series, and thereupon said bonds will be delivered to the Industrial Commission hereinbefore referred to, and will be by said Commission and the members thereof as hereinbefore designated and referred to, negotiated and sold.

That the said defendants above named, and in this paragraph referred to, unless enjoined and restrained by the order and judgment of this court, will in the same manner as herein set forth, execute, issue, attest and certify bonds of the state of North Dakota under the provisions of the Mill and Elevator Association Bond Act hereinbefore set forth, in the aggregate amount of five million dollars, to be known as Bonds of North Dakota, Mill and Elevator Series, and thereupon said bonds will be delivered to the Industrial Commission hereinbefore referred to, and will be by said Commission and the members thereof as hereinbefore designated and referred to, negotiated and sold.

That the bonds will constitute a liability against the state of North Dakota in the aggregate sum of Seventeen Million Dollars, which said liability can only be met and liquidated by moneys raised by taxation against the people and property of the state of North Dakota, and which moneys thus raised, and said liability thus created, will be for private business enterprises, and in violation of the rights of these plaintiffs and all other taxpayers of the state of North Dakota, and of the fundamental principles of a republican form of government and the Constitution of the United States.

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## XXI.

That the bonds authorized by the acts of the Sixteenth Legislative Assembly, referred to herein, would be invalid, for the following reasons:

(a) Because issued for private business, and not for public purposes;

(b) For the reason that they would violate the constitution of the state of North Dakota in this: That no sufficient provision is made in said acts for a sinking fund to meet and pay the principal of the bonds to be issued under said acts, as required by Section 182 of the state constitution;

(c) For the reason that the legislature did not exercise its function of fixing the amounts, denominations, maturities and rate of interest on said bonds, but on the contrary attempted to delegate the legislative function of fixing and determining the same to the discretion of the Governor and the Industrial Commission.

## XXII.

That the purpose of the proposed expenditure of public funds and the creation of public debts of which these plaintiffs complain, is not a public or a governmental purpose, but is a private or business purpose, and is for the purpose of financial profit and gain for those who are interested in the various industries and enterprises and business projects proposed to be installed. That such enterprises do not rest upon the public health or welfare of the people of the state or any other governmental reason which would justify the proposed expenditures or the creation of the proposed debts or in any manner come within the taxing or police power of the state. That no condition exists in the state of North Dakota which will authorize or justify the state, in the exercise of its legitimate functions of government, in engaging in the various lines of private business contemplated as aforesaid, under the said constitutional amendments and acts of the legislature, or in making the proposed expenditures

or incurring the proposed debts. That the facilities now  
16 provided for supplying the people of the state of North Dakota with the necessities and luxuries of life, and conveniences and requirements for their comfort, welfare and health, are adequate.

North Dakota has an area of 79,837 square miles, and a population, according to the war census, of 664,625. It has 53 counties, each of which is served by one or more of six railroads, whose total mileage, including main line and branch line trackage, is 6,295 miles.

On the lines of its several railroads are more than 250 incorporated cities and villages, and numerous unincorporated hamlets, and all together, more than one thousand railroad stations or sidings where freight and merchandise is loaded and unloaded, with numerous privately owned general stores where merchandise and food products, including flour, and all the necessities of life, are kept for sale, and sold.

It has 74 flour mills in operation, which are scattered over the various parts of the state, with a capacity varying from 25 to 1800 barrels per day, and a total capacity of 16,720 barrels a day, or 5,000,000 barrels capacity for a year. The mills thus privately owned and operated have the capacity of producing between seven and eight times more flour than the people of North Dakota consume, and a capacity not only to feed all the people of the state, but still have for export to other states or counties, over four million barrels per year.

It has more than 2000 licensed and privately owned warehouses and elevators located at railroad stations in the several counties of the state, with a total capacity for storing grain, of more than 60,000,000 bushels.

It has 706 state and national banks, with capital stock and surplus ranging from \$10,000 to \$560,000.

It also has a large number of loan and trust companies and numerous loan agencies, specializing in making of loans on farm lands, said individual loan agencies being distributed throughout the state, and in each and every county thereof. It also has a great number of building and loan associations specializing in making loans upon city property.

North Dakota has an area of 40,000,000 acres, more than half of which is unbroken prairie, and used for grazing and stock raising.

The principal occupation of the rural population of this state is that of grain growing, dairying and stock raising.

That a large proportion of the taxpayers of the state of North Dakota, who are the owners of a large part of the taxable property of the state, are in no manner interested in any of the business enterprises or projects authorized and provided for by the legislative acts here in question.

### XXIII.

That if the state of North Dakota were permitted to engage in the various enterprises, industries and projects hereinbefore referred to, the plaintiffs and the other taxpayers of the state, in whose behalf this suit is brought, will suffer irreparable injury and damage, and will become involved in a multiplicity of suits. That the plaintiffs and said other taxpayers will be denied the equal protection of the law, and will be deprived of their property without due process of law, all in violation of their rights as citizens of a free government, and in violation of the guaranties of the Fourteenth Amendment to the Constitution of the United States. That they will be denied the protection of Section 4, Article 4, of the Constitution of the United States, guaranteeing to each state and the citizens thereof, a republican form of government. That the protection of the guaranties of the Constitution of the United States, referred to, is now claimed by the plaintiffs in their own behalf, and on behalf of all other taxpayers of the state. That these plaintiffs, and those in whose behalf this suit is prosecuted, have no adequate remedy at law.

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### XXIII.

The constitutional amendments and acts of the legislature hereinbefore set forth authorize the defendants in the operation and conduct of the various enterprises provided for in said acts, to incur and create obligations and indebtedness in addition to the obligations and indebtedness hereinbefore specifically referred to, amounting to millions of dollars, for which indebtedness and obligations the state of North Dakota stands guarantor, and for the payment and liquidation of which the property of the plaintiffs, and the other taxpayers of the state of North Dakota may be appropriated.

Wherefore and in consideration of which, and inasmuch as plaintiffs and all other taxpayers of the state of North Dakota, on behalf



of whom this action is brought, are remediless at or by the strict rules of common law, and are only relievable in a court of equity where matters of this kind are properly cognizable, the plaintiffs file this bill of complaint against said defendants and pray:

## 1.

That the said defendants may be required to make full and true answer to this bill of complaint (but not under oath, answer under oath being hereby expressly waived).

## 2.

That section 182 of the constitution of the state of North Dakota, and all amendments thereto, in so far as the same pretends to or authorizes the said state to issue or guarantee the payment of bonds issued or guaranteed for the purpose of raising funds, either to capitalize or to maintain and operate either or any of the proposed state-owned utilities, enterprises or business projects provided for in the legislative acts of the Sixteenth Legislative Assembly of the state of North Dakota, described as House Bill 17, House Bill 18, Senate Bill 20 and Senate Bill 19, as hereinbefore and in paragraph 17 set out in full, be adjudged and decreed illegal and void.

## 3.

19 That section 185 of the constitution of the state of North Dakota and all amendments thereto, insofar as the same pretends to or authorizes the said state to engage in any industry, enterprises or business of a private nature, and not within the governmental functions or police power of the state, be adjudged and decreed illegal and void.

## 4.

That the act of the Sixteenth Legislative Assembly of the state of North Dakota, known as House Bill No. 17, and entitled

"An act creating the Industrial Commission of North Dakota, authorizing it to conduct and manage on behalf of the state certain utilities, industries, enterprises and business projects, and defining its powers and duties; and making an appropriation therefor." Which said act is fully set out in paragraph 17 of this bill of complaint, in so far as the same pretends to, or authorizes the so-called Industrial Commission thereby, and by the terms of said act created, to engage in, take charge of, control, manage, or in any manner establish, conduct, or operate any utility, industry, enterprise or business project of a private nature and not within the governmental functions or police power of the state, be adjudged illegal and void.

## 5.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as House Bill No. 18, and entitled:

"An act, declaring the purpose of the state of North Dakota to engage in the banking business and establishing a system of banking under the name of the Bank of North Dakota, operated by the state, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; making an appropriation therefor; and providing penalties for the violations of certain provisions thereof."

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to and authorizing the said state of North Dakota to enter upon and conduct a business project of a purely private nature (to-wit: the establishment of  
20 and carrying on of a system of banking) and that the same is not within the provision of any governmental functions or police power of the state, and that the said legislative act, being House Bill No. 18, and all authority pretended to be given thereunder be, adjudged and decreed illegal and void.

## 6.

That the act of the Sixteenth Legislative Assembly of the state of North Dakota, known as House Bill No. 49 and entitled—

"An act providing for the issuing of bonds of the state of North Dakota in the sum of two million dollars, to be known as "Bonds of North Dakota, Bank Series," prescribing the terms, and stating the purposes thereof; providing a tax and making other provisions for the payment thereof; making appropriations for the payment of said bonds, and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure."

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to and authorizing the said state of North Dakota to issue certain bonds in the aggregate sum of two million dollars to be used, and the proceeds thereof to be used in a purely private business project, not within the provisions of any governmental function or police power of the said state, and that said act, being House Bill No. 49, and all authority pretended to be, or granted thereunder or thereby, for the issuance of any bond or bonds of the state of North Dakota, be adjudged and decreed illegal and void.

## 7.

That the act of the Sixteenth Legislative Assembly, of the state of North Dakota, known as Senate Bill No. 130, and entitled—



21 "An Act providing for the issuing of bonds of the state of North Dakota in a sum not exceeding Ten Million Dollars, to be known as "Bonds of North Dakota, Real Estate Series," prescribing the terms and stating the purposes thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal on said bonds, and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure."

which act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to, and authorizing the said state of North Dakota to issue certain bonds in the aggregate sum of ten million dollars to be used, and the proceeds thereof to be used in a purely private business project not within the provisions of any governmental function or police power of the said state, and that said Act, being Senate Bill No. 130, and all authority pretended to be or granted thereunder and thereby, for the issuance of any bond or bonds of the state of North Dakota, be adjudged and decreed illegal and void.

## 8.

That the Act of the Sixteenth Legislative Assembly of the state of North Dakota, known as Senate Bill No. 20, and entitled—

"An Act declaring the purpose of the state of North Dakota to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator and flour mill system under the name of North Dakota Mill and Elevator Association operated by the State, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management, and making an appropriation therefor."

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to and authorizing the said state of North Dakota, to engage in a purely private business project or enterprise, to-wit: the business of manufacturing and marketing of farm products, and for the establishing of warehouses, elevators and flour mills, either within or without the state, or in foreign countries, and that such business projects or enterprises are not within the provisions of any governmental function or police power of said state, and that said act, being Senate Bill No. 20, and all authority for the establishment, maintenance and conduct of each, any or all of the businesses therein provided for, be adjudged and decreed illegal and void.

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## 9.

That the Act of the Sixteenth Legislative Assembly, of the state of North Dakota, known as Senate Bill No. 75, and entitled—

"An Act providing for the issuing of bonds of the state of North Dakota in a sum not exceeding Five Million Dollars to be known as

"Bonds of North Dakota, Mill and Elevator Series"; prescribing the terms and stating the purposes thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal of said bonds, and to carry into effect the provisions of this act; and declaring this act to be an emergency measure."

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to, and authorizing the said state of North Dakota to issue certain bonds in the aggregate sum of five million dollars to be used, and the proceeds thereof to be used in a purely private business project, not within the provisions of any governmental function or the police power of the said state, and that said act, being Senate Bill No. 75 and all authority pretended to be or granted thereunder and thereby, for the issuance of any bond or bonds of the state of North Dakota, be adjudged and decreed illegal and void.

## 10.

That the Act of the Sixteenth Legislative Assembly of the state of North Dakota, known as Senate Bill No. 19, and entitled—

"An Act declaring the purpose of the state of North Dakota to engage in the enterprise of providing homes for residents of this state, and to that end to establish a business system operated by the state under the name of the Home Building Association of North Dakota attempted to be, pretended to be, or authorized by House the powers and duties of the persons charged with its management, and making an appropriation therefor,"

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to, and authorizing the state of North Dakota to enter upon, establish and conduct a purely private business project or enterprise, to-wit: the building of homes and loaning of money upon real estate security, and that such business project or enterprise is not within the provisions of any governmental function or police power of the said state, and that said act, being Senate Bill No. 19, and all authority pretended to be or granted thereunder and thereby for the establishment and conduct of the business project or enterprise therein provided for be adjudged and decreed illegal and void.

## 11.

That the said defendant Obert Olson individually and as state Treasurer of the state of North Dakota be forever enjoined and prohibited by the order, judgment and decree of this court, from preparing or issuing, either or any of the bonds of the state of North Dakota, and defining the scope and manner of its operations, and Bill No. 49, Senate Bill No. 130, or Senate Bill No. 75, herein be-

fore referred to; and that the said defendant Thomas Hall, individually and as secretary of state in and for the state of North Dakota, be by the order, judgment and decree of this court, forever enjoined and prohibited from attesting either or any of the bonds so provided in said bills in this paragraph of the prayer mentioned; and that the said defendants, Carl Kozitsky, individually and as Auditor of the state of North Dakota, and the said Thomas Hall individually and as Secretary of State of the state of North Dakota, be forever enjoined and prohibited by the order, judgment and decree of this court, from signing and endorsing upon each, either or any of said bonds so attempted to be, pretended to be, or authorized to be issued as aforesaid, any certificates showing that said bonds, or any of them were issued pursuant to law and within the debt limit of the state; and that the said Lynn J. Frazier individually and as Governor of the state of North Dakota, and the said Obert Olson individually and as Treasurer of the state of North Dakota, be forever enjoined and prohibited from executing any of the said bonds so attempted to be, pretended to be, or authorized to be issued by either of said legislative acts herein, and in this paragraph of the prayer referred to; and that said defendants individually and as officers as aforesaid, each and all be forever enjoined and prohibited by the order, judgment and decree of this court, from delivering any

24 bonds so pretended to be or authorized under the provisions of each or any of the said acts of the Sixteenth Legislative Assembly of the state of North Dakota herein, and in this section of the prayer referred to, to the said Industrial Commission authorized under the provisions of House Bill No. 17 aforesaid; and that the said Lynn J. Frazier, Governor of the state of North Dakota, John N. Hagen, Commissioner of Agriculture and Labor of the said state, and William Langer, Attorney General of said state, individually and in their official capacity, and as members of the Industrial Commission aforesaid, be forever enjoined and prohibited from negotiating, selling or otherwise disposing of any bond or bonds issued under the provisions of any said act of the Sixteenth Legislative Assembly of the state of North Dakota as hereinbefore set forth, being House Bill No. 18, House Bill No. 49, and Senate Bill No. 75, hereinbefore more particularly referred to.

## 12.

That the appropriations provided for and attempted to be made, or made in and by the provisions of the certain acts of the Sixteenth Legislative Assembly of the state of North Dakota, known as House Bill No. 17, House Bill No. 18, House Bill No. 49, Senate Bill No. 130, Senate Bill No. 20, Senate Bill No. 75, and Senate Bill No. 19, which said acts are set out in full in paragraph 17 of this bill of complaint, be by the order, judgment and decree of this court declared the appropriation of public funds of the state of North Dakota, for private use, and illegal and void.

## 13.

That Lynn J. Frazier as Governor of said state, Carl Kozitsky as State Auditor, William Langer as Attorney General, Obert Olson as State Treasurer, and Thomas Hall as Secretary of State, constituting the State Auditing Board, of the said state, of North Dakota, individually, and as such officers and members of said board, be forever enjoined and prohibited by the order, judgment and decree of this court from auditing any claim or demand for a warrant or other character of requisition upon the funds of the state of North Dakota for the payment of any of the appropriations attempted to be made, or made in any or either of the acts of the Sixteenth Legislative Assembly of the State of North Dakota known as House Bill No. 17, House Bill No. 18, House Bill No. 49, Senate Bill No. 130, Senate Bill No. 20, and Senate Bill No. 75 and Senate Bill No. 19.

Also that the said defendant Carl Kozitsky, as auditor of the said state of North Dakota, be by the order, judgment and decree of this court, forever enjoined and prohibited from drawing, executing and delivering his warrant or order upon the treasurer of the state of North Dakota, for the payment of any of the funds of the state of North Dakota, in payment of any or either of the appropriations made as aforesaid in said bills in this paragraph of the prayer enumerated; and that the defendant, Obert Olson, as State Treasurer of the said State of North Dakota, be by the order, judgment and decree of this court forever enjoined and prohibited from paying out of the funds of the said state of North Dakota, any order, warrant, draft or other requisition calling for the payment of any of said funds because of any authority, pretended to be given, or given in and by any or either of the said legislative acts in this paragraph of this prayer enumerated.

## 14.

That the defendants Lyon J. Frazier, Governor; William Langer, Attorney General; Thomas Hall, Secretary of State, Carl Kozitsky, State Auditor, and Minnie J. Nielson, Superintendent of Public Instruction, constituting the "Board of University and School Lands," individually and officially, as officers of the said state of North Dakota, and as said Board of University and School Lands, be by the order, judgment and decree of this court forever enjoined and prohibited from investing any of the funds of the state of North Dakota realized from the sale of school lands in any bond, or bonds, issued, negotiated or sold under the provision of either or any of the acts of the Sixteenth Legislative Assembly of the state of North Dakota, known and referred to as House Bill No. 49, Senate Bill No. 130, and Senate Bill No. 75, and that said defendants in this paragraph of this prayer enumerated, individually and as officers of the said state of North Dakota, and members of the said Board of University and School Lands, be, by the order, judgment and decree of this court, forever enjoined and

prohibited from placing or depositing any of the funds of the state of North Dakota derived from the sale of school lands of the state of North Dakota in any bank attempted to be, or organized under and by virtue of the provisions of the act of the Sixteenth Legislative Assembly of the state of North Dakota known and described as House Bill No. 18.

15.

That a temporary order be issued against the defendants restraining and enjoining them from carrying out or attempting to carry out the provisions of the constitutional amendments and acts of the legislature aforesaid during the pendency of this action; and restraining and enjoining said defendants from doing or performing any of the acts or things complained of herein, during the pendency of this action.

16.

That plaintiffs have such other and further relief in the premises as the nature of the case shall require, and to your Honor shall seem meet and proper.

17.

27 Plaintiffs further pray that a writ of subpoena be issued directed to said defendants and each of them, commanding them, and each of them to appear and make answer to plaintiffs' bill of complaint at a certain time, and to abide the further orders of the court.

N. C. YOUNG,  
J. S. WATSON,  
E. T. CONMY,  
*Of Fargo, N. D.;*  
TRACY R. BANGS,  
PHILIP R. BANGS,  
C. J. MURPHY,  
T. A. TONER,  
*Of Grand Forks, N. D.,*  
*Solicitors for Plaintiffs.*

STATE OF NORTH DAKOTA,  
*County of Cass, ss:*

William James Howe, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to the knowledge of the deponent; except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

WILLIAM JAMES HOWE.

Subscribed and sworn to before me this 29th day of March, 1919.

E. T. CONMY,

[SEAL.]

Notary Public, Cass County, N. D.

My commission expires —.

STATE OF NORTH DAKOTA,

County of Grand Forks, ss:

John W. Scott being duly sworn, deposes and says that he is one of the plaintiffs, in the above entitled suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to matters therein stated upon information and belief, and that as to those matters he believes it to be true.

JOHN W. SCOTT.

Subscribed and sworn to before me this 31st day of March, 1919.

H. N. HAMILTON,

[SEAL.]

Deputy Clerk, U. S. District Court.

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*Industrial Commission Act—House Bill No. 17.*

### An Act

Creating the Industrial Commission of North Dakota, authorizing it to conduct and manage on behalf of the State certain utilities, industries, enterprises and business projects, and defining its powers and duties; and making an appropriation therefor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. A commission is hereby created and established to conduct and manage, on behalf of the state of North Dakota, certain utilities, industries, enterprises and business projects, now or hereafter established by law. It shall be known as the Industrial Commission of North Dakota, but may be designated as the Industrial Commission.

Section 2. The Industrial Commission shall consist of three members, namely: The Governor, the Attorney General, and the Commissioner of Agriculture and Labor, of the State of North Dakota. Two members shall constitute a quorum for the transaction of business. The first meeting of the Commission shall be held in the office of the Governor, at his call, within twenty days after this Act goes into effect. Its meetings thereafter shall be held at such times and places as the Governor or a majority of the Commission may determine. It shall be provided by the proper authorities with suitably furnished offices at the seat of government.

Section 3. The Governor shall be the Chairman of the Industrial Commission, and its attorney shall be the Attorney General of the



State. In the transaction of its general business it may employ secretaries and other subordinate officers, clerks and agents, on such terms as it may deem proper, appointing and discharging all persons so engaged when and as, in its judgment the public interests may require. The Commission may require suitable bonds of any such secretary or other subordinate officer, clerk or agent, and shall  
29 fix the amount of the compensation of each. Such compensation together with other expenditures for operation and maintenance of the general business of the Commission, shall remain within the appropriation available in each year for such purpose.

Section 4. The Industrial Commission shall adopt and procure an official seal, and may authenticate therewith its documentary acts. All orders, rules, regulations, by-laws and written contracts, adopted or authorized by the commission shall, before becoming effective, be approved by the Governor, as Chairman, and shall not be in force unless approved and signed by him.

Section 5. The Industrial Commission is hereby empowered and directed to manage, operate, control and govern all Utilities, enterprises and business projects, now or hereafter established, owned, undertaken, administered or operated by the State of North Dakota, except those carried on in penal, charitable or educational institutions. To that end it shall have the power, in the exercise of its sound judgment, and is hereby directed.

(a) To determine the locations of such utilities, industries, enterprises and business projects.

(b) For the State, and in its name and behalf, in order to accomplish the purposes of this Act, to acquire by purchase, lease or by exercise of the right of eminent domain, as provided by Chapter 36 of the Code of Civil Procedure. Compiled Laws of 1913, all necessary properties and property rights and to hold and possess or to sell the whole or any part thereof: to construct and reconstruct necessary buildings thereon, to equip, maintain, repair, and alter any and all such properties and the improvements thereon; and generally to use the same so as to promote such utilities, industries, enterprises and business projects.

(c) To appoint a Manager, and all necessary subordinate officers and employees, of and for each such utility, industry, enterprise and business project; to constitute any such Manager its general agent in the performance of its duties in the particular utility, industry, enterprise or business project in which he shall be engaged, but  
30 subject, nevertheless, in such agency to the supervision, limitation and control of the Commission; to employ such contractors, architects, builders, attorneys, salesmen, clerks, accountants and other experts, agents and servants, as in the judgment of the Commission and the interests of the State may require; and to define the duties, designate the titles, and fix the compensation and bonds, of all such persons so engaged in each such utility, industry, enterprise and business project; provided, however, that subject to the control and regulation of the Commission the manager of each such

utility, industry, enterprise and business project shall appoint and employ such deputies, assistants and other subordinates, and such contractors, architects, builders, attorneys, salesmen, clerks, accountants and other experts, agents and servants, as he shall in his judgment deem are required by the interests of the utility, industry, enterprise or business project, together with other expenditures for the operation and maintenance thereof, shall remain within the appropriation and earnings lawfully available in each year for such purpose.

(d) To remove and discharge any and all persons appointed in the exercise of the powers granted by this Act, whether by the Commission or by any manager of any utility, industry, enterprise or business project; and any such removal may be made whenever in the judgment of the Commission the public interests require it; provided, however, that all appointments and removals contemplated by this Act shall be so made as the Commission shall deem most fit to promote the efficiency of the public service.

(e) To fix the buying price of things bought and the selling price of things sold, incidental to the said utilities, industries, enterprises and business projects, and to fix rates and charges for any and all services rendered thereby. In fixing such prices, rates and charges, the Commission shall make provision for accumulating a fund with which to replace, in the general funds of the state, the amount received by the Commission under the appropriation made in this Act, as may be directed by the legislative assembly.

31 (f) To make rules, regulations, orders and by-laws for the management and operation, and for the transaction of the business, of such utilities, industries, enterprises and business projects.

(g) To procure the necessary funds for such utilities, industries, enterprises and business projects by negotiating the bonds of the state of North Dakota, in such amounts and in such manner as may be provided by law.

(h) To conduct investigations of all matters directly or indirectly connected with, or bearing upon the success of, any of the utilities, industries, enterprises, and business projects under its management, and of all matters which may directly or indirectly effect the methods, operation, processes, products or results thereof. In aid of any such investigation the Commission shall have power to summon and compel the attendance of witnesses, and to examine them under oath, which any member thereof shall have the power to administer. It shall have access to and may order the production of, all books, accounts, papers and property, material to such investigation. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court. The claim that any testimony or evidence sought to be elicited are produced on such examination may tend to criminate the person giving or producing it, or expose him to public ignominy, shall not excuse



him from testifying or producing evidence, documentary or otherwise; but no person shall be prosecuted or subjected to any penalty or forfeiture for and on account of any matter or thing concerning which he may testify or produce such evidence; provided, that he shall not be exempted from prosecution and punishment for perjury committed in so testifying. It shall be the duty of the Commission to cause the testimony so taken to be transcribed and filed in the office of the Commission at the seat of government, within ten days after it is taken, or as soon thereafter as practicable, and when so filed it shall be open for inspection by any person. Any person failing or refusing to obey the order of the Commission issued under the provisions of this section, or to give or produce evidence when required, shall be reported by the Commission to the District Court or any judge thereof, and shall be dealt with by the court 32 or judge as for contempt of court.

(i) To make rules and regulations for its own procedure; and to do any and all things necessary or expedient in conducting the business of such utilities, industries, enterprises and business projects, and in the accomplishment of the purposes of this Act.

Section 6. The Industrial Commission shall prepare an annual report and file it in the office of the Secretary of State not later than the first day of February of each year. The report shall contain an itemized account of its expenditures and a complete and detailed financial statement of each utility, industry, enterprise and business project, under its control, showing fully all items of income and disbursements and liabilities of every nature for the calendar year ending December 31st next preceding. The report shall also set forth a list of all persons in the employ of the Commission, with the name of each person drawing a salary under its authority, the amount of the salary and all other emoluments received, and the fund from which drawn.

Section 7. There is hereby appropriated out of the general funds of the State, not otherwise appropriated, two hundred thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this Act. This appropriation is hereby made available immediately upon the passage and approval of this act.

Section 8. This Act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

*Bank of North Dakota Act—House Bill No. 18.*

#### An Act

Declaring the purpose of the State of North Dakota to engage in the banking business and establishing a system of banking under the name of the Bank of North Dakota, operated by the State, and defining the scope and manner of its operation and the powers

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and duties of the persons charged with its management; making an appropriation therefor; and providing penalties for the violation of certain provisions thereof;

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. For the purpose of encouraging and promoting agriculture, commerce and industry, the State of North Dakota shall engage in the business of banking, and for that purpose shall, and does hereby, establish a system of banking owned, controlled and operated by it, under the name of the Bank of North Dakota.

Section 2. The Industrial Commission shall operate, manage and control the Bank of North Dakota, locate and maintain its places of business, of which the principal place shall be within the state, and make and enforce orders, rules, regulations and bylaws for the transaction of its business. The business of the Bank, in addition to the other matters herein specified, may include anything that any bank may lawfully do, except as herein restricted; but this provision shall not be held in any way to limit or qualify either the powers of the Industrial Commission herein granted, or the functions of said Bank herein defined. The Industrial Commission shall meet within twenty days after the passage and approval of this Act to begin the organization of the Bank.

Section 3. To accomplish the purposes of this Act, the Industrial Commission shall acquire by purchase, lease or by exercise of the right of eminent domain, as provided by chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all requisite property and property rights, and may construct, remodel and repair buildings; but it shall not invest more than ten per cent of the capital of the bank in furniture, fixtures, lands and buildings for office purposes.

34 Section 4. The Industrial Commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the Bank. To that end it shall appoint a manager, and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such manager its general agent, in respect to the functions of said Bank, but subject, nevertheless, in such agency, to the supervision, limitation and control of the Commission. It shall employ such contractors, architects, builders, attorneys, cashiers, tellers, clerks, accountants, and other experts, agents and servants as in the judgment of the Commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the Commission, the Manager of the bank shall appoint and employ such deputies, cashiers, tellers, and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants, and other experts, agents and servants, as he shall, in his judgment, deem are required by the interest of the

Bank. The total compensation of such appointees and employees together with other expenditures for the operation and maintenance of the Bank, shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employees of the Bank engaged upon its financial functions shall, before entering upon their duties, respectively furnish good and sufficient bonds to the State in such amount and upon such conditions as the Commission may require and approve; but the bond of the manager shall not be less than fifty thousand dollars. Such bond shall be filed with the Secretary of State.

Section 5. The Industrial Commission may remove and discharge any and all persons, appointed by the exercise of the powers granted by this Act, whether by the Commission or by the Manager of the Bank, and any such removal may be made whenever in the judgment of the Commission the public interests require it; provided, however, that all appointments and removals contemplated by this Act shall be so made as the commission shall deem most fit to promote the efficiency of the public service.

Section 6. The bank shall be opened and shall proceed to transact business whenever there shall be delivered to the Industrial Commission bonds in the sum of two million dollars issued by the State as may be provided by law for such purpose. The fund procured by the negotiations and sale of such bonds is hereby designated and shall be known as the capital of said bank.

Section 7. All state, county, township, municipal and school district funds, and funds of all penal, educational and industrial institutions and all other public funds shall be, by the persons having control of such funds, deposited in the Bank of North Dakota within three months from the passage and approval of this Act, subject to disbursement for public purposes on checks drawn by the proper officials in the manner now or hereafter to be provided by law; provided, however, that on a proper showing made by any official having control of public funds, the Industrial Commission may permit postponement of the deposit of such funds or any part thereof in the Bank of North Dakota, the period of such postponement not to exceed six months. And provided further, that if any such funds are now loaned by authority of law under a contract terminating at a future time, then the deposit of such funds in the bank of North Dakota shall not be required until two months after the time of expiration of such contract. Any person who shall violate any of the provisions of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in a county jail for not less than ninety days, and by a fine of not less than one hundred dollars.

Section 8. Whenever any of the public funds hereinbefore designated shall be deposited in the Bank of North Dakota, as hereinbefore provided, the official having control thereof, and the sureties on the bond of every such official, shall be exempt from all liability by reason of loss of any such deposited funds while so deposited.

Section 9. The Bank of North Dakota may receive deposits from any source, including the United States Government and any foreign or domestic individual, corporation, association, municipality, bank, or government. Funds may be deposited to the credit of the Bank of North Dakota in any bank or agency approved by the Industrial Commission.

Section 10. All deposits in the Bank of North Dakota — hereby guaranteed by the State. Such deposits shall be exempt from state, county and municipal taxes of any and all kinds.

Section 11. Funds deposited by State Banks in the Bank of North Dakota shall be deemed "available funds" within the meaning of that term as used in section 5170 of the Compiled Laws of 1913. For banks that make the Bank of North Dakota, a reserve depository, it may perform the functions and render the services of a clearing house, including all facilities for providing domestic and foreign exchange, and may re-discount paper, on such terms as the Industrial Commission shall provide.

Section 12. The Industrial Commission, unless otherwise limited by law, shall from time to time fix the rates of interest allowed and received in transactions of the bank. Such rates shall be as nearly uniform and constant as practicable, and shall not be fixed or changed to work any discrimination against or in favor of any person or corporation. But in respect to time deposits received by the Bank, transactions may be reasonably classified as to the amounts and the duration of time involved and a reasonable differentiation of interest rates based on such classification may be allowed. When interest is allowed on any deposits it shall not be less than one or more than six per cent. The Industrial Commission shall also fix reasonable charges without unjust discrimination, for any and all services rendered by the Bank.

Section 13. All checks and other instruments and items of exchange payable on demand, sent by the Bank of North Dakota to any State Bank or banking association in North Dakota, for collection, shall be by such State Bank or banking association remitted for at par to the Bank of North Dakota. Any person or corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor.

Section 14. The Bank of North Dakota may deposit funds in any bank or banking association within or without the state upon such terms and conditions as the Industrial Commission shall determine.

Section 15. The Bank of North Dakota may transfer funds to other departments, institutions, utilities, industries, enterprises or business projects of the state, which shall be returned with interest to the Bank. It may make loans to counties, cities or political subdivisions of the state, or to state or national banks, on such terms, and under such rules and regulations, as the Industrial Commission

may determine; but it shall not make loans or give its credit to any individual, association — private corporation, except that it may make loans to any individual, association or private corporation secured by duly recorded first mortgages on real estate in the state of North Dakota in amounts not to exceed one half the value of the security, or secured by warehouse receipts issued by the Industrial Commission or by any licensed warehouse within the state, in amounts not to exceed ninety per cent of the value of the commodities evidenced thereby. It shall not, however, loan on real estate security more than thirty per cent of its capital, nor in addition thereto, more than twenty per cent of its deposits. Additional funds that may be required for such real estate loans, shall be procured from the sale of state bonds as may be provided by law.

Section 16. The Industrial Commission shall prescribe the forms of application for a mortgage loan on real estate, and shall provide for appraisal of the proposed security. Until otherwise provided by the Commission, when an application for a mortgage loan on real estate is made, it shall be referred to the Commissioner of University and School Lands, for appraisal of the proposed security. The Commissioner of University and School Lands shall thereupon promptly cause it to be appraised in the same manner as school lands are ap-

38      praised, and upon completion of such appraisal, shall return the application, together with the appraisal, to the bank.

Thereupon the bank shall promptly determine whether to grant or refuse any part or all of such loan.

Section 17. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of real estate loan bonds issued, if any, by the State of North Dakota; second; a charge for administration and surplus, at a rate not exceeding one per cent per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and third, such amounts to be applied on the principal as will extinguish the debt in not less than ten nor more than thirty years; provided, however, that advance payment of one or more annual installments, for the reduction of the principal, or the payment of the entire principal, may be made at any regular installment date; and provided further, that in case of a crop failure which reduces the mortgagor's reasonable crop income by one half, all payments under said mortgage may, in the discretion of the Industrial Commission, be extended for one year, upon condition that on the payment of all installments, such further annual payments shall be made as will pay the interest, with interest thereon, for the years for which no payments were made. The industrial commission shall determine whether a mortgagor is entitled to an extension of the payment of any installment, under the provisions of this Section.

Section 18. Every such mortgage, and the note or other obligation thereby secured, shall run to "The Manager of the Bank of

North Dakota, his successors in office or his assigns", as payee and mortgagee, and shall contain a recital that it is executed and delivered in conformity with and upon the conditions expressed in this Act, designated by its title and the date of its approval. After having been duly recorded in each county in which the lands therein described are situated, every such mortgage shall be delivered to the Manager of said Bank and together with said acts or other obligation secured by said mortgage shall be to the Bank of North Dakota, and whenever it shall have been fully paid, the Manager shall promptly satisfy and discharge the mortgage lien of record and deliver the mortgage cancelled, with a satisfaction thereof, to the person entitled to receive it.

Section 19. Every such mortgage, together with the note or other obligation thereby secured, may be sold and assigned upon the payment to the Bank of the full value thereof, and upon such sale and assignment the Manager may endorse either with or without recourse. In that case payments upon said note or other obligation shall be made to the person entitled to receive them; but each such assignment shall be made subject to the provision concerning extension of the time of payments on account of crop failures as provided in Section 17 of this Act, and subsequent action of the Industrial Commission in that regard shall be binding upon the assignee of such mortgage; provided, however, that after assignment of such mortgage extensions of payment for a yearly period shall be limited in total number to not more than one for every period of five years or fraction thereof during which such mortgage has to run after the date of assignment.

Section 20. Every such mortgage, together with the note or other obligation thereby secured, may be assigned, and upon order of the Industrial Commission shall be assigned, to the State Treasurer of the State of North Dakota as security for bonds to be issued by the State as provided by law. In case of such assignment all payments due upon said note or other obligation shall be made to the State Treasurer, and the money so by him received shall be by him held or disbursed as may be provided by law. If while any such mortgage so assigned to the State Treasurer is in his hands, the note or obligation thereby secured shall have been fully paid, the State Treasurer shall so certify to the Manager of the Bank, who shall thereupon proceed to satisfy said mortgage in the same manner as though said note or other obligation had been paid directly to the Bank. In case of such assignment to the State Treasurer of any such mortgage, the provisions contained in Section 19 of this Act, respecting extensions on account of crop failure, shall be effective and shall be applied.

Section 21. All business of the bank may be conducted under the name of "The Bank of North Dakota." Title to property pertaining to the operation of the Bank shall be obtained and conveyed in the name of "The State of North Dakota, doing business as the Bank of North Dakota." Written instruments shall be executed



in the name of the State of North Dakota, signed by any two members of the Industrial Commission, of whom the Governor shall be one, or by the manager of the Bank of North Dakota, within the scope of his authority so to do as defined by the Industrial Commission.

Section 22. Civil actions may be brought against the State of North Dakota on account of causes of action claimed to have arisen out of transactions *nonconnected* with the operation of the Bank of North Dakota, upon condition that the provisions of this section are complied with. In such actions the State shall be designated as "The State of North Dakota, doing business as the Bank of North Dakota," and the service of process therein shall be made upon the Manager of said Bank. Such actions may be brought in the same manner and shall be subject to the same provisions of law as other civil actions brought pursuant to the provisions of *law as other civil actions brought pursuant to the provisions of* the Code of Civil Procedure. Such actions shall be brought, however, in the county where the Bank of North Dakota shall have its principal place of business, except as provided in Sections 7415, 7416 and 7418, Compiled Laws of North Dakota, 1913. The provisions of sections 375 and 657 of the Compiled Laws of 1913 shall not apply to claims against the State, affected by the provisions of this action.

Section 23. The State Examiner shall personally or through deputy examiners, visit the Bank of North Dakota at least twice annually, and shall inspect and verify the assets in its possession and under its control, with sufficient thoroughness of investigation 41 to ascertain with reasonable certainty whether the valuations are correctly carried on its books. He shall investigate the methods of operation and accounting. He shall report the result of each such examination and investigation to the Industrial Commission as soon as practicable, and to the Legislative Assembly at its next ensuing session, and, as provided in paragraph numbered 5 of section 5146 of the Civil Code, Compiled Laws, 1913, to the State Banking Board.

Section 24. There is hereby appropriated out of the general funds of the State not otherwise appropriated, one hundred thousand dollars, or so much thereof as may be necessary to carry out the provisions of this Act. This appropriation is hereby made available immediately upon the passage and approval of this act. The Industrial Commission shall, out of the earnings of the Bank, make provision for accumulating a fund with which to replace in the general funds of the State the amount received by the Commission under this appropriation, as may be directed by the Legislative Assembly.

Section 25. All Acts and parts of Acts inconsistent with this Act are hereby repealed.

Section 26. This Act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

*Bank of North Dakota Bond Act—House Bill No. 49.***An Act**

Providing for the issuing of bonds of the State of North Dakota in the sum of two million dollars, to be known as "Bonds of North Dakota, Bank Series;" prescribing the terms, and stating the purposes thereof; providing a tac and making other provisions for the payment thereof; making appropriations for the payment of said bonds and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure.

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. The State Treasurer is hereby directed forthwith to prepare for issue, and the Governor and the State Treasurer  
42 are hereby authorized, empowered and directed to issue, negotiable bonds of the State of North Dakota in the aggregate amount of two million dollars. They shall be executed by the Governor and the State Treasurer under the great seal of the State, and shall be attested by the Secretary of State. The Auditor and Secretary of State shall endorse and sign on each such bond a certificate showing that it is issued pursuant to law and is within the debt limit. The bonds so issued shall be designated "Bonds of North Dakota, Bank Series."

Section 2. The bonds so issued shall be payable to the purchaser or bearer; provided however, that the provisions of Section 151 Compiled Laws of 1913 are hereby declared to apply to them. They shall be issued in denominations of from five dollars to ten thousand dollars, and shall be payable in not less than ten nor more than thirty years from the passage of this act. They shall bear interest at a rate not exceeding six per cent per annum from their date until maturity, payable semi-annually on the first day of January and of July in each year; and coupons shall be attached to each bond, evidencing the amount of interest payable at each first day of January and July until maturity. Principal, and interest shall be payable at the office of the State Treasurer in Bismarck. The terms of said bonds, as to values of denominations, period of maturity and rates of interest, shall be fixed by the Governor in his sound judgment, within the limitations above stated. Every such bond and coupon must be presented for payment at the office of the State Treasurer within six years from the date of its maturity; and no such bond or coupon shall bear interest after maturity unless payment thereof shall not be made upon due presentation for payment. All said bonds shall be exempt from state, county and municipal taxes of any and all kinds.

Section 3. The said issue of bonds is authorized, for the purpose of making delivery thereof to the Industrial Commission of North



Dakota as hereinafter provided, and as contemplated by section six of the act entitled "An Act declaring the purpose of the State of North Dakota to engage in the banking business and establishing a system of banking under the name of the Bank of North Dakota, operated by the State, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; making an appropriation therefor; and providing penalties for the violation of certain provisions thereof," enacted the year 1919 by the Sixteenth Session of the Legislative Assembly of North Dakota, being House Bill number 18, and also by Section 5, paragraph (g) of the Act entitled "An Act creating the Industrial Commission of North Dakota, authorizing it to conduct and manage on behalf of the State certain utilities, industries, enterprises and business projects, and defining its power and duties, and making an appropriation therefor," enacted in the year 1919 by the Sixteenth Session of the Legislative Assembly of North Dakota, being house bill No. 17 (Seventeen), and for the purpose of enabling the Industrial Commission to negotiate and sell such bonds, pursuant to the provisions of this Act and of said Section Five, paragraph (g) of the Act entitled as last above stated, being House Bill Number 17 of the Sixteenth Legislative Assembly of North Dakota in the year 1919; thereby to procure the fund to be designated as the capital of the Bank of North Dakota.

Section 4. In furtherance of the purposes declared by this Act it is hereby made the duty of the Governor and the State Treasurer, after the issue, execution, sealing and attestation of said bonds, to deliver them to the Industrial Commission in such denominations and amounts bearing interest at such rates, and running to such periods of maturity, as may be determined by the Governor, in his discretion, upon consideration of such recommendations as the Commission may make in regard thereto. The Industrial Commission is empowered, authorized and directed, in connection with and in addition to its other powers and duties, to act as the agent of the State for the negotiation, sale and delivery of said bonds. It shall sell them for cash in such manner and at such terms as in its sound discretion it shall deem most advantageous to the interests of the State. The Commission is hereby authorized to receive all moneys paid by buyers of said bonds, upon the sale thereof, and upon receipt of the purchase price to deliver to each purchaser the bonds by him purchased. Upon such delivery of bonds so purchased and paid for, the faith and credit of the State of North Dakota is pledged for the payment thereof, both principal and interest, to the lawful holder and owner thereof upon presentation for payment, according to law. The moneys so derived and received from the sale of said bonds shall constitute the fund to be designated as the capital of the Bank of North Dakota, and shall be so employed by the Industrial Commission. Nothing in this Act, however, shall be construed to prevent the purchase of any of said bonds with any funds in the Bank of North Dakota.

Section 5. From time to time the Industrial Commission shall, out of the earnings derived from the operation of the Bank of North Dakota, pay to the State Treasurer such moneys as the Commission shall deem available to devote to the purpose of paying said bonds and interest. In making such payment the Commission shall file a statement with the State Treasurer specifying the purpose of such payment. When moneys shall have been so paid to the State Treasurer, he shall apply the same to their specified purpose as hereinafter directed.

Section 6. At the time of each annual meeting of the State Board of Equalization hereafter, the Industrial Commission shall deliver to said Board an exact written statement of all bonds issued under the provisions of this Act outstanding at that time, including therein the dates of maturity interest, rates, and all other information proper to enable the Board intelligently to comply with the provisions of this Act in regard to tax levies. On the basis of such information, the State Board of Equalization shall annually levy a tax at the time other taxes are levied, sufficient in amount to pay such interest on said bonds as will become due during the year beginning  
45 on the next ensuing first day of January, and said tax shall be collected in the same manner as other state taxes are collected. In determining, however, the amount of the tax sufficient for such purpose the Board of Equalization shall take into account whatever moneys, if any, shall then have been paid to the State Treasurer by the Industrial Commission, as provided by Section 5 of this Act, for the specific purpose of paying such interest. The Board of Equalization shall apply to the State Treasurer for information as to the amount of such moneys, and he shall forthwith supply the information requested. If the amount of such moneys shall equal or exceed the amount of the interest on said bonds payable during said year beginning on the next ensuing first day of January, then no tax shall be levied by the Board of Equalization for that purpose; but if the amount of such moneys shall be less than the amount of the interest on said bonds payable during said year, then the board of Equalization shall deduct the amount of said money in the possession of the Treasurer from the amount of the interest so payable, and shall levy the tax hereinbefore in this section provided for at least the difference between said amounts.

Section 7. Whenever it shall appear to the Board of Equalization from the information contained in any statement delivered to it by the Industrial Commission at any annual meeting of said Board, as provided in Section 6, above, that there will mature, within a period of five years, from such annual meeting, any of the bonds provided for in this Act the Board of Equalization shall thereupon, at such annual meeting, levy a tax in an amount equal to one fifth of the amount of the principal of such bonds; provided, however, that in determining the amount of such tax, the Board of Equalization shall take into account whatever moneys, if any, shall have been paid to the State Treasurer by the Industrial Commission for the specific purpose of paying the principal of said bonds when due, as provided

in section 5 of this Act. The Board of Equalization shall apply to the State Treasurer for information as to the amount of such moneys and as to the time when paid to him. If the amount of such moneys paid to the Treasurer since the date of the last proceeding tax levy made by the Board of Equalization shall equal or exceed one fifth of the amount of the bonds so to mature, then such tax shall not be levied; but if the amount of such moneys paid to the state Treasurer since the date of the last preceding tax levy shall be less than one fifth of the amount of said bonds so to mature, then the Board of Equalization shall deduct the amount of such moneys, so paid, from such one fifth of said bonds, and shall levy the tax, hereinbefore in this section provided for the difference. It is the intention of this Section to provide that in each of the last five years, before the maturity of any said bonds, a state tax shall be levied which, together with such moneys as shall during the next preceding year have been paid to the State Treasurer by the Industrial Commission for the purpose, shall be at least sufficient to pay one fifth part of the principal of said bonds.

Section 8. To identify and distinguish the funds provided and available for the payment of the bonds issued pursuant to this Act there is hereby created and established, as a part of the moneys of the State received and kept by the State Treasurer, a fund to be designated the "Bank Bond Payment Fund." All moneys received by the State Treasurer, whether from the proceeds of taxes, or from payments made by the Industrial Commission, or from legislative appropriation, or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of the said bonds, or interest thereon shall be by him kept in said fund distinct from all other moneys, and shall be disbursed by him only for the particular purpose or purposes for which such moneys shall be delivered to him; and no other appropriation shall ever be made of the moneys in said fund until the said bonds shall be fully paid. But this Act shall not be construed as preventing the State Treasurer from depositing said funds in the Bank of North Dakota, as provided by law with respect to all public funds.

47 Section 9. There is hereby appropriated, all of the moneys obtained as proceeds of the taxes provided for in sections 6 and 7 above, and all moneys paid to the State Treasurer by the Industrial Commission as specified in Section 5 above, and all moneys constituting the bank Bond Payment Fund, or so much thereof as may be from time to time necessary, to pay the interest, and principal upon the said bonds as payments thereon shall become due and whenever any of said bonds or any coupons thereon shall become due, shall be presented for payment, the State Treasurer shall pay the same out of the fund applicable thereto. If for any reason the said fund shall for the time being, be insufficient, the Treasurer shall supply the deficiency out of any other available moneys of the state in his custody; but in that case he shall as soon as possible, out of the Bank Bond Payment Fund, return the amount of such deficiency to the source whence taken.

Section 10. There is hereby appropriated out of the general funds, of the State, not otherwise appropriated, ten thousand dollars, or as much thereof as may be necessary to carry out the provisions of this Act. This appropriation is hereby made available immediately upon the passage and approval of this Act.

Section 11. This Act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval; and the provisions of sections 6, 7, 8 and 9 hereof shall remain in full force and effect throughout the period of thirty-six years from and after the passage of this Act.

48      *North Dakota Real Estate Bond Act—Senate Bill #130.*

### An Act.

Providing for the issuing of bonds of the State of North Dakota in a sum not exceeding Ten Million Dollars, to be known as "Bonds of North Dakota, Real Estate Series"; prescribing the terms and stating the purposes thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal on said bonds, and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure.

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. An issue of bonds of the State of North Dakota, to be known as "Bonds of North Dakota, Real Estate Series," is hereby authorized and directed under the conditions and in the manner and for the purposes hereinafter set forth.

Section 2. Whenever first mortgages upon real estate, such as are authorized by the Act entitled "An Act declaring the purpose of the State of North Dakota to engage in the banking business and establishing a system of banking under the name of the Bank of North Dakota, operated by the State, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; making an appropriation therefor; and providing penalties for the violation of certain provisions thereof," enacted in the year 1919 by the Sixteenth Session of the Legislative Assembly of North Dakota, being House Bill No. 18, hereinafter called the Bank Act, shall be held by the Bank of North Dakota, securing a total amount of unpaid mortgage loans in the sum of at least one hundred thousand dollars; the Industrial Commission may cause such mortgagee or such of them as it shall think proper but not less than in the total amount of one hundred thousand dollars,

49      to be assigned, together with the obligations thereby secured, to the State Treasurer. The assignment of each such mortgage and obligation shall be executed by the Manager of the Bank and shall recite that it is made to "The State Treasurer of North Dakota and his successors in office in trust as security for bonds to

be issued by the State of North Dakota under the designation of Bonds of North Dakota, Real Estate Series, as provided by law;" and it shall be duly recorded by said Manager in each county in which the lands affected by the mortgage are situated. As soon as such assignments are recorded, they, with the instruments assigned, shall be delivered to the State Treasurer, and at the same time the Manager of the Bank shall deliver to the State Treasurer, a verified statement showing the amount of the loan remaining unpaid on each such obligation secured by the mortgages so assigned and delivered.

Section 3. As soon as the State Treasurer shall receive said instruments, he shall notify the Governor, the State Auditor and the Secretary of State, who shall each immediately inspect them. Thereupon the State Treasurer shall immediately prepare for issue, and the Governor and the State Treasurer shall thereafter issue, negotiable bonds of the State of North Dakota in an amount not exceeding the amount of the outstanding loans secured by the mortgages delivered to and in the possession of the State Treasurer, as above provided. Each of the bonds so issued shall contain a recital that it is issued and that it is secured by real estate first mortgages deposited with the State Treasurer of North Dakota, in pursuance of the provisions of this Act, which may be cited as the "Real Estate Bond Act of North Dakota." Said bonds shall be executed by the Governor and the State Treasurer under the great seal of the State and shall be attested by the Secretary of State. The Auditor and Secretary of State shall endorse and sign on each such bond, when issued, a certificate showing that it is issued pursuant to law and is within the debt limit. The bonds so issued shall be designated "Bonds of North Dakota, Real Estate Series."

Section 4. The bonds so issued shall be payable to the purchaser or bearer; provided, however, that the provisions of section 151 Compiled Laws of 1913, are hereby declared to apply to them. They shall be issued in denominations of from five dollars to ten thousand dollars, and shall be payable in not less than ten or more than thirty years from the passage of this Act; provided, however, that at the option of the Industrial Commission they shall be payable at any time after five years from the date of their issue, upon public notice given by the Industrial Commission that they shall mature and become payable at a date not less than one year from the time of the giving of such public notice. They shall bear interest at a rate not exceeding six per cent per annum from their date until maturity, payable semiannually on the first day of January and of July in each year; and coupons shall be attached to each bond, evidencing the amount of interest payable at each first day of January and July until maturity. Principal and interest shall be payable at the office of the State Treasurer in Bismarck. The terms of said bonds, as to value of denominations, periods of maturity and rates of interest shall be fixed by the commission in its sound judgment, within the limitations above stated. Every such bond and coupon must be presented for payment at the office of the State Treasurer within six years from the date of its maturity; and no such bond or

coupon shall bear interest after maturity unless payment thereof shall not be made upon due presentation for payment.

Section 5. The said issue of bonds is authorized for the purpose of making delivery thereof to the Industrial Commission of North Dakota, as hereinafter provided, to the end that the said Commission may, by negotiation and sale of said bonds, procure necessary funds for the Bank of North Dakota thus replacing in said bank the funds employed by it from time to time in making loans upon first mortgages of real estate.

Section 6. In furtherance of the purpose declared by this Act, it is hereby made the duty of the Governor and the State Treasurer after the issue, execution, sealing and attestation of said bonds, to  
51 deliver them to the Industrial Commission, in such denomination and amounts, bearing interest at such rates, and running to such period of maturity, as may be required by the Commission, within the limitations hereinbefore stated. The Industrial Commission is empowered, authorized and directed, in connection with and in addition to its other powers and duties, to act as the agent of the state for the negotiation, sale and delivery of said bonds. It shall sell them at not less than par value for cash in such manner and at such times as in its sound discretion it shall deem most advantageous to the interests of the State. The Commission is hereby authorized to receive all moneys paid by buyers of said bonds, upon the sale thereof, and upon receipt of the purchase price to deliver to each purchaser the bonds by him purchased. Upon such delivery of bonds so purchased and paid for, the faith and credit of the State of North Dakota is pledged for the payment thereof, both principal and interest to the lawful holder and owner thereof upon presentation for payment, according to law. The moneys so derived and received from the sale of said bonds shall be placed by the Industrial Commission in the funds of the Bank. Nothing in this Act, however, shall be construed to prevent the purchase of any said bonds with any funds in the Bank of North Dakota.

Section 7. After such assignment of any mortgage, and the obligation thereby secured, all payments accruing thereon shall be made to the State Treasurer. He shall hold and use said mortgages, obligations and the moneys paid thereon, in trust, first, for the security and payment of the bonds to be issued as herein provided, and second, for redelivery to the bank of such remaining part or balance thereof as may come within the provisions hereinafter stated. He shall keep said moneys in a separate fund designated the "Real Estate Bond Payment Fund," apart from all other funds in his possession; and the provisions of section 7 of the Bank act shall  
52 not apply thereto. He shall also keep in said fund, as a part thereof, for the same purpose and in the same manner and under the same conditions, all moneys received by him, whether from the proceeds of taxes, or from payments made by the Industrial Commission, or from legislative appropriations, or otherwise; which shall be by law or by other authoritative designation made applicable to the payment of the said bonds *sm* or interest



thereon. No other disposition, by appropriation or otherwise, shall ever be made of the moneys in said funds until said bonds shall be fully paid, or until the time limit by law for the payment thereof shall have expired; provided, however, that if any of said bonds issued and delivered to the Industrial Commission, as hereinbefore provided, shall be returned to the State Treasurer, not sold, then such returned bonds shall be deemed a part of the bond issue secured by such fund.

Section 8. The State Treasurer shall pay the interest on said bonds upon presentment to him of the coupons for such interest when due and shall redeem said bonds upon their maturity by paying the principal thereof, all such payments being made from the Real Estate Bond Payment Fund, without auditor's warrant. Each payment so made, in addition to other accounting as provided by law, shall be reported to the Bank of North Dakota. All moneys in said fund, or as much thereof as may be necessary, are hereby appropriated for the payment of the interest and the principal of said bonds, and this appropriation shall not be repealed and no provision made in this Act for the payment of said bonds and interest shall be discontinued until the debt evidenced by said bonds both principal and interest, shall have been paid.

Section 9. If the obligation secured by any such mortgage so assigned to the State Treasurer shall not be performed according to its terms by the mortgagor, by payment or otherwise, or if any condition expressed in any such mortgage shall not be duly performed and kept according to its terms, the State Treasurer shall proceed to exercise the rights conferred upon him as the assignee of said mortgage, though the enforcements of its terms by 53 foreclosure or otherwise, for realising upon or protecting the security afforded by said mortgage or for collecting the amount of the obligation thereby secured. If in so doing it shall become necessary for the State Treasurer to purchase the property mortgaged, he shall take title thereto as State Treasurer, and a Trustee, in trust for the security for payment of said bonds; and if title to any such mortgaged lands shall be perfected in any State Treasurer by virtue of said purchase, he shall apply to the District Court of the county in which said lands are situated for direction as to the further performance of the duties of his trust in the premises. The cash proceeds derived from the possession, use or sale of any such lands shall become a part of the said Real Estate Bond Payment Fund.

Section 10. If while any mortgage so assigned to the State Treasurer is in his hands, the note or obligation thereby secured shall have been fully paid according to its terms, the State Treasurer shall immediately so certify to the Manager of the Bank. The State Treasurer shall also give information to the Bank as to any proceedings which he may from time to time take respecting the enforcement and collection of the securities so assigned to him, not paid according to their terms.

Section 11. The State Treasurer shall from time to time, at the request of the Bank of North Dakota, give information as to the amount of cash balance in his hands credited to said Real Estate Bond Payment Fund. If such balance shall include funds received by him upon the payment of the principal sum loaned upon any such mortgage; the bank may, to the extent of such principal sums so paid, substitute therefor new mortgages by assignment thereof, together with the obligation thereby secured, in the same manner and to the same effect as in the case of the mortgages and obligations originally assigned as the basis of the issue of such bonds, the State Treasurer shall pay to the Bank the amount thereof, and such mortgage so substituted shall become and continue a part  
54 of the body of said trust, the same as the mortgages and obligations originally assigned to the State Treasurer therefor; provided, however, that unless the amount of the mortgages in such fund falling due before bonds secured thereby is sufficient to pay such bonds, the Treasurer shall reserve sufficient cash for that purpose.

Section 12. All said bonds shall be exempt from state, county and municipal taxes of any and all kinds.

Section 13. If at the time of the annual meeting of the State Board of Equalization, the moneys in the Real Estate Bond Payment Fund shall appear to the State Treasurer to be insufficient to meet the payments of interest or principal upon said bonds accruing within a period of one year thereafter, he shall so inform the State Board of Equalization, which shall thereupon proceed to include in the annual tax levy, such tax as in its judgment shall be necessary to meet the indicated deficiency, and the proceeds of such tax shall be placed by the State Treasurer in said fund.

Section 14. Whenever it shall appear that there are in said Real Estate Bond Payment Fund, funds which, with the mortgage securities, on hand are more than sufficient to provide for the payment of all bonds and interest thereon outstanding, the excess of such funds required for that purpose shall be paid by the State Treasurer to the Bank of North Dakota, if so directed by the Industrial Commission.

Section 15. The powers herein granted may be repeatedly exercised and the duties following thereupon shall be likewise repeatedly performed from time to time as occasion may arise under the terms of this Act; provided, however, that at no time shall the amount of bonds issued and outstanding pursuant to the terms of this Act exceed the total of ten million dollars.

Section 16. There is hereby appropriated out of the general funds of the State, not otherwise appropriated, ten thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this act. This appropriation is hereby declared  
55 to be immediately available upon the passage and approval of this Act.

Section 17. This Act is hereby declared to be an emergency measure, and shall take effect and be in force from and after its passage and approval.

*Mill and Elevator Association Act—Senate Bill # 20.*

An Act

Declaring the purpose of the State of North Dakota to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator, and flour mill system under the name of North Dakota Mill and Elevator Association operated by the state, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor.

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. That for the purpose of encouraging and promoting agriculture, commerce and industry, the State of North Dakota shall engage in the business of manufacturing and marketing farm products and for that purpose shall establish a system of warehouses, elevators, flour mills, factories, plants, machinery and equipments, owned, controlled and operated by it under the name of North Dakota Mill and Elevator Association hereinafter for convenience called the Association.

Section 2. The Industrial Commission shall operate, manage, and control the Association, locate and maintain its place of business, and shall make and enforce orders, rules regulations and by-laws for the transaction of its business. The business of the Association, in addition to other matters herein specified, may include anything that any private individual or corporation may lawfully do in conducting a similar business except as herein restricted. The Industrial Commission shall meet within twenty days after the passage and approval of this Act to begin the organization of the Association.

56 Section 3. To accomplish the purposes of this act, the Industrial Commission shall acquire by purchase, lease, or by exercise of right of eminent domain, as provided by Chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all necessary property or property rights, and may construct remodel or repair all necessary buildings; and may purchase, lease, construct, or otherwise acquire, warehouses, elevators, flour mills, factories, offices, plants, machinery equipments and all other things necessary, incidental or convenient in the manufacturing and marketing of all kinds of raw and finished farm products within or without the state and may dispose of the same; and may buy, manufacture, store, mortgage, pledge, sell, exchange or otherwise acquire or dispose of all kinds of manufactured and raw farm and food products

and by-products, and may for such purposes establish and operate exchanges, bureaus, markets and agencies, within or without the State, including foreign countries, on such terms and conditions, and under such rules and regulations as the Commission may determine.

Section 4. The Industrial Commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the Association. To that end it shall appoint a manager, and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such manager its general agent in respect to the functions of the association, but subject, nevertheless, in such agency, to the supervision, limitation and control of the Commission. It shall employ such contractors, architects, builders, attorneys, clerks, accountants, and other experts, agents and servants as in the judgment of the Commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the Commission, the Manager of the Association shall appoint and employ such deputies and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants and other  
57 experts, agents and servants as he shall, in his judgment, deem are required by the interests of the association. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the Association, shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employees of the Association engaged upon its financial functions shall, before entering upon their duties, respectively furnish good and sufficient bonds to the state in such amount and upon such conditions as the commission may require and approve; but the bond of the Manager shall not be less than fifty thousand dollars. Such bonds shall be filed with the Secretary of State.

Section 5. The Industrial Commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this Act, whether by the Commission or by the Manager of the association, and any such removal may be made whenever in the judgment of the Commission the public interests require it; provided, however, that all appointments and removals contemplated by this Act shall be so made as the Commission shall deem most fit to promote the efficiency of the public service.

Section 6. The Industrial Commission shall fix the buying price of all things bought, and the selling price of all things sold, incidental to the operation of the Association, and shall fix all charges for any and all services rendered by the Association; but in fixing these prices—while all services are to be rendered as near as may be at cost—there shall be taken into consideration in addition to other necessary costs, a reasonable charge for depreciation of all property, all over-head expenses and a reasonable surplus, together with all

amounts required for the repayment, with interest of funds received from the state.

Section 7. All business of the Association may be conducted under the name of "North Dakota Mill and Elevator Association."

58 Title to property pertaining to the operation of the Association may be obtained and conveyed in the name of "The State of North Dakota, doing business as the North Dakota Mill and Elevator Association." Written instruments shall be executed in the name of the State of North Dakota, signed by any two members of the Industrial Commission, of whom the Governor shall be one, or by the manager of the Association, within the scope of his authority so to do as defined by the Industrial Commission.

Section 8. Civil actions may be brought against the State of North Dakota on account of causes of action claimed to have arisen out of transactions, connected with the operation of the association upon conditions that the provisions of this section are complied with. In such actions the state shall be designated as "The State of North Dakota, doing business as North Dakota Mill and Elevator Association", and the service of process therein shall be made upon the manager of the association. Such actions may be brought in the same manner and shall be subject to the same provisions of law as other civil actions brought pursuant to the provisions of the Code of Civil Procedure. Such actions shall be brought, however, in the county where the Association shall have its principal place of business, except as provided in Sections 7405, 7416 and 7418 Compiled Laws of North Dakota, 1913. The provisions of sections 375 and 657 of the Compiled Laws of 1913 shall not apply to claims against the State, affected by the provisions of this action.

Section 9. There is hereby appropriated, to carry out the purposes of this act, all moneys raised by the mill tax for terminal elevators as provided in sections 2072 and 2073 of the Compiled Laws of 1913. Said moneys shall be paid to the Manager of said Association and he shall place the said moneys in the general funds of the Association.

Said money, together with any funds that shall be procured

59 by the Industrial Commission through the sale of state bonds, as may be provided by law for that purpose shall be designated as the capital of the Association.

Section 10. The State Examiner shall personally or through deputy examiners visit the Association at least twice annually, and shall inspect and verify the assets in its possession and under its control, with sufficient thoroughness of investigation to ascertain with reasonable certainty whether the valuations are correctly carried on its books. He shall report the results of such examination and investigation to the Industrial Commission as soon as practicable, and to the Legislative Assembly at its next ensuing session.

Section 11. This Act is hereby declared to be an emergency, measure, and shall take effect and be in force from and after its passage and approval.

*Mill and Elevator Association Bond Act—Senate Bill #75.**AN ACT.*

Providing for the issuing of bonds of the State of North Dakota in a sum not exceeding Five Million Dollars to be known as "Bonds of North Dakota, Mill and Elevator Series"; prescribing the terms and stating the purpose thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal of said bonds and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure.

Be it enacted by the Legislative Assembly of the State of North Dakota.

Section 1. The issuance of bonds of the State of North Dakota, to be known as "Bonds of North Dakota, Mill and Elevator Series," is hereby authorized and directed, under the conditions and in the manner and for the purpose hereinafter set forth.

Section 2. Whenever the Industrial Commission shall deem it expedient so to do, for the purpose of authorizing the issuance of bonds of the State of North Dakota as contemplated by this Act, it shall cause mortgages to be executed in the manner prescribed by Section 7 of the Act entitled "An Act declaring the purpose of the State of North Dakota to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator and flour mill system under the name of North Dakota Mill and Elevator Association operated by the State, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor", enacted in the year 1919 by the Sixteenth Session of the Legislative Assembly of North Dakota, being Senate Bill No. 20. The grantee and mortgagee designated in said mortgages shall be "The State Treasurer of North Dakota and his successors in office in trust". Each mortgage shall be executed and delivered to the Treasurer of North Dakota and his successors in office, in trust as security for bonds to be issued by the State of North Dakota under the designation of "Bonds of North Dakota, Mill and Elevator Series," as provided by law, and shall contain a recital to that effect. The property described in and covered by said mortgages shall be such property as is owned by or may be acquired for the State of North Dakota, doing business as North Dakota Mill and Elevator Association and dedicated to or acquired for the use thereof by the Industrial Commission. All property dedicated to or acquired for the state of North Dakota doing business as North Dakota Mill and Elevator Association shall be described in and covered by first mortgages so that at all times all of the property of the State of North Dakota doing business as North Dakota Mill and Elevator Association shall be pledged to the payment of all of the funds issued, sold, and



delivered under the provisions of this Act, and attached to each of said mortgages, and incorporated by reference into the provisions thereof, shall be an itemized statement of all of the property  
61 specified and covered therein, showing the true value of each item thereof based upon appraisal made under the direction of the Industrial Commission and verified by the oath of the appraisers. Said mortgage shall be a first lien upon all of said property without prior lien or incumbrance of any kind whatsoever.

Section 3. Said mortgages shall be duly recorded in each county in which the property affected thereby is situated. As soon as such mortgages are recorded they shall be delivered to the State Treasurer, and be retained by the State Treasurer and his successors in office in trust until all of the bonds secured thereby as provided by this Act shall be paid.

Section 4. As soon as the State Treasurer shall receive such mortgages so recorded he shall notify the Governor, the State Auditor and the Secretary of State, who shall thereupon immediately inspect them, and upon ascertaining from such examination and inspection that said mortgages have been properly executed and duly recorded, it shall be the duty of the State Treasurer to immediately prepare for issue, and the Governor and State Treasurer shall thereafter issue, negotiable bonds of the State of North Dakota in an amount not exceeding the value of the property included within the terms of said mortgages as expressed in the itemized statements and valuation attached to said mortgages, as provided in Section 2 of this Act. Each of the bonds so issued shall contain a recital that it is secured by first mortgages deposited with the State Treasurer of North Dakota upon property of the State, dedicated to the use of the North Dakota Mill and Elevator Association; that it is issued in pursuance of the provisions of this Act, which may be cited as the "Mill and Elevator Bond Act of North Dakota." Said bonds shall be executed by the Governor and the State Treasurer under the great seal of the State, and shall be attested by the Secretary of State. The Auditor  
and Secretary of State shall endorse and sign on each such  
62 bond, when issued, a certificate showing that it has been issued pursuant to law and is within the debt limit. The bonds so issued shall be designated "Bonds of North Dakota, Mill and Elevator Series," and may be issued in series from time to time as the Industrial Commission may by order designate and require.

Section 5. The bonds so issued shall be payable to the purchaser or bearer; provided, however, that the provisions of Section 151, Compiled Laws of 1913, are hereby declared to apply to them. They shall be issued in denominations of from five dollars to ten thousand dollars, and shall be payable in not less than ten or more than thirty years from the passage of this Act. They shall bear interest at the rate of not exceeding six per cent per annum from their date until maturity, payable semi-annually on the first day of January and of July in each year; and coupons shall be attached to each bond, evidencing the amount of interest payable at each first day of January and July until maturity. Principal and interest shall be payable

at the office of the State Treasurer in Bismarck. The terms of said bonds, as to value of denominations, and rates of interest, shall be fixed by the Commission on its sound judgment, within the limitations above stated. Every such bond and coupon must be presented for payment at the office of the State Treasurer within six years from the date of its maturity; and no such bond or coupon shall bear interest after maturity unless payment thereof shall not be made upon due presentation for payment.

Section 6. The said bonds so issued shall be delivered to the Industrial Commission of North Dakota to the end that the said Commission may by negotiation and sale of said bonds procure necessary funds for the operation of said association.

Section 7. In furtherance of the purpose declared by this Act, it is hereby made the duty of the Governor and the State Treasurer after the issue, execution, sealing and attestation of said bonds to deliver them to the Industrial Commission, in such denominations and amounts, bearing interest at such rates, and running to such period of maturity, as may be required by the Commission, within the limitations herein stated. The Industrial Commission is empowered, authorized and directed, in connection with and in addition to its other powers and duties, to act as the agent of the state for the negotiation, sale and delivery of said bonds. It shall sell them for each at not less than par value in such manner and at such time in its sound discretion it shall deem most advantageous to the interests of the state. The commission is hereby authorized to receive all moneys paid by buyers of said bonds, upon the sale thereof, and upon receipt of the purchase price to deliver to each purchaser the bonds by him purchased. Upon such delivery of bonds so purchased and paid for, the faith and credit of the State of North Dakota is pledged for the payment thereof, both principal and interest, to the lawful holder and owner thereof upon presentation for payment, according to law. The moneys so derived and received from the sale of said bonds shall be placed by the Industrial Commission in the funds of the Association. Nothing in this Act, however, shall be construed to prevent the purchase of any said bonds with any funds in the Bank of North Dakota.

Section 8. The State Treasurer and his successors in office shall hold such mortgages, first, for the security and payment of the bonds issued as provided in this Act, and second, for the satisfaction and cancellation thereof, and re-delivery to the Industrial Commission, if and when said bonds have been fully paid.

Section 9. From time to time the Industrial Commission shall, out of the earnings derived from the operation of the Association, pay to the State Treasurer such moneys as the Commission shall deem available to devote to the purpose of paying said bonds and interest. In making such payment the Commission shall file a statement with the State Treasurer specifying the purpose of such payment. When moneys shall have been so paid to the State Treasurer, he shall apply the same to their specified purpose as hereinbefore directed.

Section 10. At the time of each annual meeting of the  
 64 State Board of Equalization hereafter, the Industrial Commission shall deliver to said Board an exact written statement of all bonds issued under the provisions of this Act outstanding at that time, including therein the dates of maturity, interest rates and all other information proper to enable the board intelligently to comply with the provisions of this act in regard to tax levies. On the basis of such information, the State Board of Equalization shall annually levy a tax, at the time other taxes are levied, sufficient in amount to pay such interest on said bonds as will become due during the year beginning on the next ensuing first day of January, and said tax shall be collected in the same manner as other state taxes are collected. In determining, however, the amount of the tax sufficient for such purpose the Board of Equalization shall take into account whatever moneys, if any, shall then have been paid to the State Treasurer by the Industrial Commission, as provided in this act, for the specific purpose of paying such interest. The Board of Equalization shall apply to the State Treasurer for the information as to the amount of such moneys, and he shall forthwith supply the information requested. If the amount of such moneys shall equal or exceed the amount of the interest on said bonds payable during said year beginning on the next ensuing first day of January, then no tax shall be levied by the Board of Equalization for that purpose; but if the amount of such moneys shall be less than the amount of the interest on said bonds payable during said year, then the Board of Equalization shall deduct the amount of said moneys in the possession of the treasurer from the amount of the interest so payable, and shall levy the tax hereinbefore in this section provided for at least the difference between said amounts.

Section 11. Whenever it shall appear to the Board of Equalization from the information contained in any statement delivered to it by the Industrial Commission at an annual meeting of said Board, as provided, in Section 10 above that there will mature, within a period  
 of five years from such annual meeting, any of the bonds  
 65 provided for in this Act, the Board of Equalization shall thereupon, at such annual meeting, levy a tax in an amount equal to one fifth of the amount of the principal of such bonds; provided, however, that in determining the amount of such tax, the Board of Equalization shall take into account whatever moneys, if any, shall have been paid to the State Treasurer by the Industrial Commission for the specific purpose of paying the principal of said bonds when due, as provided in Section 9 of this Act. The Board of Equalization shall apply to the State Treasurer for information as to the amount of such moneys and as to the times when paid to him. If the amount of such moneys paid to the treasurer since the date of the last preceding tax levy made by the Board of Equalization shall equal or exceed one fifth of the amount of the bonds so to mature, then such tax shall not be levied; but if the amount of such moneys, paid to the State Treasurer since the date of the last preceding tax levy, shall be less than one fifth of the amount of said bonds so to mature, then the Board of Equalization shall deduct the amount of such moneys

paid, from such one fifth of said bonds, and shall levy the tax, hereinbefore in this section provided, for the difference. It is the intention of this section to provide that in each of the last five years, before the maturity of any of said bonds, a state tax shall be levied which, together with such moneys as shall during the next preceding year have been paid to the State Treasurer by the Industrial Commission for the purpose, shall be at least sufficient to pay one fifth of the principal of said bonds.

Section 12. To identify and distinguish the funds provided and available for the payment of the bonds issued pursuant to this Act, there is hereby created and established as a part of the moneys of the state received and kept by the State Treasurer, a fund to be designated the "Mill and Elevator Bond Payment Fund." All moneys received by the State Treasurer whether from the proceeds of taxes, or from payments made by the Industrial Commission, or from legislative appropriation, or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of the said bonds, or interest thereon, shall be by him kept in said fund distinct, from all other moneys, and shall be disbursed by him only for the particular purpose or purposes for which such moneys shall be delivered to him; and no other appropriation shall ever be made of the moneys in said fund until the bonds shall be fully paid. But this act shall not be construed as preventing the State Treasurer from depositing said funds in the Bank of North Dakota, as provided by law with respect to all public funds.

Section 13. There is hereby appropriated, all of the moneys obtained as proceeds of the taxes provided for in sections 10 and 11 above, and all moneys paid to the State Treasurer by the Industrial Commission as specified in Section 9 above, and all moneys constituting the Mill and Elevator Bond Payment Fund, or so much thereof as may be from time to time necessary, to pay ~~the~~ interest and principal upon the bonds as payments thereon, shall become due; and whenever any of said bonds, or any coupons thereon, being due, shall be presented for payment, the State Treasurer shall pay the same out of the fund applicable thereto. If for any reason the said fund shall, for the time being, be insufficient, the Treasurer shall supply the deficiency out of any other available moneys of the state in his custody; but in that case he shall as soon as possible, out of the Mill and Elevator Bond Payment Fund, return the amount of such deficiency to the source whence taken.

Section 14. The State Treasurer shall pay the interest on said bonds upon presentation to him of the coupons for such interest when due, and shall redeem said bonds upon their maturity by paying the principal thereof, all such payments being made from the Mill and Elevator Bond Payment Fund, without auditor's warrant. Each payment so made, in addition to other accounting as provided by law; shall be reported to the said Association. All moneys in said fund, or as much thereof as may be necessary, are

67 hereby appropriated for the payment of the interest and the principal of said bonds, and this appropriation shall not be repealed, and no provisions made in this Act for the payment of said bonds and interest shall be discontinued until the debt evidenced by said bonds both principal and interest, shall have been paid.

Section 15. The powers herein granted may be repeatedly exercised and the duties following thereupon shall be likewise repeatedly performed from time to time as occasion may arise under the terms of this act; provided, however, that at no time shall the amount of bonds issued and outstanding pursuant to the terms of this act, exceed the total of Five Million Dollars.

Section 16. All said bonds shall be exempt from state, county and municipal taxes of any and all kinds.

Section 17. There is hereby appropriated out of the general funds of the state, not otherwise appropriated, ten thousand dollars or as much thereof as may be necessary, to carry out the provisions of this Act. This appropriation is hereby declared to be immediately available upon the passage and approval of this Act.

Section 18. This Act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

### *Home Building Act—Senate Bill No. 19.*

#### *An Act*

Declaring the purpose of the State of North Dakota to engage in the enterprise of providing homes for residents of this state and to that end to establish a business system operated by the State under the name of The Home Building Association of North Dakota, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; and making an appropriation therefor.

Be it enacted by the Legislative Assembly of the State of North Dakota:

68 Section 1. For the purpose of promoting home building and ownership, the State of North Dakota shall engage in the enterprise of providing homes for residents of the State and to that end it shall and does hereby establish a business system operated by the State under the name of The Home Building Association of North Dakota, hereinafter for convenience called the Association.

Section 2. The Industrial Commission of North Dakota shall operate, manage and control the Association and shall locate and maintain its places of business, of which the principal place shall be within the State, and shall make and enforce orders, rules, regulations and by-laws for the transaction of its business.

Section 3. To accomplish the purposes of this Act the Industrial Commission shall acquire by purchase, lease or exercise of the right of eminent domain, as provided by Chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all requisite property and property rights, and may construct, repair and remodel buildings, having strict regard for economy in the administration of its affairs.

Section 4. The Industrial Commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the Association. To that end it shall appoint a Manager, and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such Manager its general agent, in respect to the functions of the Association, but subject, nevertheless, in such agency, to the supervision, limitation and control of the Commission. It shall employ such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants as in the judgment of the Commission the interest of the State may require and shall define the duties, designate the title, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the Commission, the Manager of the Association shall appoint and employ such deputies and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants, as he shall in his judgment, deem are required by the interest of the Association. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the association shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employees of the Association engaged upon its financial functions shall, before entering upon their duties, respectively furnish good and sufficient bonds to the State in such amount and upon such conditions as the Commission may require and approve; but the bond of the Manager shall not be less than fifty thousand dollars. Such bonds shall be filed with the Secretary of State.

Section 5. The Industrial Commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this act, whether by the Commission or by the Manager of the Association, and any such removal may be made whenever in the judgment of the Commission the public interests require it; provided, however, that all appointments and removals contemplated by this Act shall be so made as the Commission shall deem most fit to promote the efficiency of the public service.

Section 6. Whenever funds shall be available, derived from the sale of bonds issued by the State and delivered to the Industrial Commission for negotiations to carry on the business of the Association; or derived from appropriations made by the Legislative Assembly for such purpose; or derived from deposits received by the Association as hereinafter provided, or derived from payments



made for homes by purchasers thereof, such funds shall be used, under proper regulations of the Industrial Commission, for investment in building or purchasing homes within the State for members of the Home Builders' League, as such Leagues are hereinafter defined. No home shall be built, or purchased and sold, at a price to exceed five thousand dollars except in case of a farm house, in which case the selling price shall not exceed ten thousand  
70 dollars. The word "home" as herein used, shall mean a dwelling house, within or adjacent to a town, village or city, together with such equipments as are customarily used in connection with a dwelling house. The words "farm home" as herein used, shall mean a tract of agricultural land together with a dwelling house, a barn, and such other farm buildings and equipments as are customarily used in connection with a farm home.

Section 7. The Association shall make a specialty of building standardized houses, barns and other buildings and equipments provided for herein. For its uses the Industrial Commission may acquire suitable tracts of land, by purchase or by the exercise of the right of eminent domain, deemed by the Commission suitable to accomplish the purposes of this Act; and may subdivide such land into lots, and lay out streets, sidewalks, parks and gardens therein, and build homes on said lots, as provided for herein, and supply them with water, light and heat.

Section 8. Any person may open a home buying account with the Association by applying in person by mail or through a Home Buyers' League, a trade union, a woman's club or other recognized industrial, social or civic body. Special efforts shall be made to secure deposits from children, young people, renters and wage earners in order that more people may own their own homes. Any such deposits, together with interest, may be withdrawn upon six months' notice.

Section 9. The Industrial Commission shall fix the rate of interest on all deposits and loans, and the charges for all services rendered by the Association, but no interest rate allowed or received shall exceed six per cent per annum.

Section 10. Ten or more depositors in the Association may form themselves into a local body to be known as a Home Buyers' League. Every such Home Buyers' League must be authorized, registered and numbered in the office of the Association and it shall be governed by such rules and regulations as may be presented by the Industrial  
Commission. No person shall become a member of a Home  
71 Buyers' League without the written consent of all the other members, which shall be filed and recorded in the office of the Association.

Section 11. Each Homebuyers' League shall elect a Secretary-Treasurer who shall perform the duties usual to such office, and shall be its executive officer. He shall also be the agent of the Association and shall perform such other duties as the Industrial Commission may prescribe.

Section 12. Whenever a member of a Home Buyers' League shall have deposited with the Association a sum equal to twenty per cent of the total selling price of a home or farm home, the Association shall, upon his application purchase or build such home or farm home and convey it to him upon a cash payment of twenty per cent, the balance to be secured by a purchase money mortgage on the property, and to be paid on an amortization plan by means of a fixed number of monthly installments sufficient to cover, first a charge on the loan at a rate to be determined by the Industrial Commission, second, a charge for administration and surplus at a rate not exceeding one per cent per annum on the unpaid principal, said two rates combined constitute the interest rate on the deferred payments; and, third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than ten or more than twenty years. Additional payments in sums of twenty-five dollars or any multiple thereof, for the reduction of the amount of the unpaid principal, or the payment of the entire principal, may be made on any regular installment date, under the rules and regulations of the Industrial Commission. In case of any accident, crop failure, or other event which reduces the buyers' reasonable income by one half, all payments under such contract may in the discretion of the Industrial Commission, be extended from time to time for a period of one year; provided, however, that on the payment of all installments such further annual payment shall be payable as will pay the interest with interest thereon, for the years for which no payments were made.

Section 13. Each member of every Home Buyers' League shall be jointly and severally liable for all contracts, debts and obligations due the Association from his League, to the extent of fifteen per cent of the price at which his home was sold to him.

Section 14. All funds of the Association shall be deposited in the Bank of North Dakota, and disbursed through it.

Section 15. All business of the Association may be conducted under the name of "The Home Building Association of North Dakota." Title to property pertaining to the operation of the Association shall be obtained and conveyed in the name of "The State of North Dakota, doing business as the Home Building Association of North Dakota." Written instruments shall be executed in the name of the State of North Dakota, signed by any two members of the Industrial Commission, of whom the Governor shall be one, or by the Manager of the Association within the scope of his authority so to do as defined by the Industrial Commission.

Section 16. Civil actions may be brought against the State of North Dakota on account of causes of action claimed to have arisen out of transactions connected with the operation of the Association upon condition that the provisions of this Section are complied with. In such actions the State shall be designated as "The State of North Dakota, doing business as the Home Building Association," and the

service of process therein shall be made upon the manager of the Association. Such actions may be brought in the same manner and shall be subject to the same provisions of law as other civil actions brought pursuant to the provisions of the Code of Civil Procedure. Such actions shall be brought, however, in the county where the Association shall have its principal place of business, except as provided in sections 7415, 7416 and 7418, Compiled Laws of North Dakota, 1913. The provisions of Sections 375 and 657 of the Com-

73      piled Laws of 1913 shall not apply to claims against the State affected by the provisions of this Section.

Section 17. The State Examiner shall personally or through deputy examiner visit the Association at least twice annually, and shall inspect and verify the assets in its possession and under its control with sufficient thoroughness of investigation to ascertain with reasonable certainty whether the valuations are correctly carried on its books. He shall report the results of such examination and investigation to the Industrial Commission as soon as practicable, and to the Legislative Assembly at its next ensuing session.

Section 18. There is hereby appropriated out of the General Funds of the State, not otherwise appropriated, one hundred thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this act. This appropriation is hereby made available immediately upon the passage and approval of this act. The Industrial Commission shall, out of the earnings of the Association make provision for accumulating a fund with which to replace in the general funds of the State, the amount received by the Commission under this appropriation, as may be directed by the Legislative Assembly.

73½

*Motion to Dismiss.*

Filed April 7, 1919.

(Title of Case.)

Now comes Lynn J. Frazier and John N. Hagen individually Lynn J. Frazier as Governor of the State of North Dakota; John N. Hagen as Commissioner of Agriculture and Labor of the State of North Dakota; and Lynn J. Frazier, William Langer and John N. Hagen, acting as the Industrial Commission of North Dakota, being certain of the defendants in the above entitled action and move the court to dismiss this action and that they take their costs in this suit incurred for the following reasons:

1. Because it appears in the complaint filed in this cause that there is insufficiency of fact to constitute a valid cause of action in equity against these defendants or any of them and that said complaint fails to allege facts constituting such cause of action.

2. Because it appears in the complaint filed in this cause that this Honorable Court has no jurisdiction of the subject matter of the pretended cause of action set forth in said complaint.

WILLIAM LEMKE,  
*Of Fargo, North Dakota,*  
*Solicitor for said Defendants.*

FREDERIC A. PIKE,  
*Of St. Paul, Minnesota,*  
*Of Counsel.*

*Answer.*

Filed April 15, 1919.

(Title of Case.)

The answer of the above named defendants, William Langer, Obert Olson, Thomas Hall, Minnie J. Neilson, and Carl Kozitsky as individuals, and William Langer, Lynn J. Frazier, Carl Kozitsky, Obert Olson and Thomas Hall as members of the State Auditing Board of the State of North Dakota, and William Langer, Thomas Hall, Carl Kozitsky, Lynn J. Frazier and Minnie J. Nielson, as members of the Board of University and School Lands of said state; William Langer as Attorney General of said State, Obert Olson, as State Treasurer of said state, Carl Kozitsky, as State Auditor of said state,

74 Thomas Hall, as Secretary of State of said state, and Minnie J. Nielson, as Superintendent of Public Instruction of said state; and William Langer, John N. Hagen and Lynn J. Frazier, as members of the Industrial Commission of North Dakota, to the Bill of Complaint exhibited against them by the above named plaintiffs.

These answering defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefits and advantages, of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies, in the Bill of Complaint of plaintiffs contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised that it is material or necessary for them to make answer thereunto, answering say:

#### I.

These answering defendants allege that none of these defendants, and none of the other defendants named in this action, has any private or pecuniary interests in the subject matter of the action, either as individuals or in their several respective representative capacities.

#### II.

These defendants further answering, deny that this action is a suit in equity between plaintiffs and defendants as citizens of the State of North Dakota; and deny that the suit arises under the Constitution or any law of the United States.

## III.

Further answering, these defendants allege that this action is a suit against defendants as duly elected, qualified, and acting public officials of the State of North Dakota, and as administrative agents of said state, and that this suit is in effect and purpose an action against the sovereign state of North Dakota, in which the relief sought is an interference with the state of North Dakota in the regular and orderly administration of its public affairs; and that the state of North Dakota has not consented to be sued in this action.

## IV.

Further answering, these defendants allege that there is a non-joinder of parties defendant in this action for the reason that the bill of complaint shows upon its face that the state of North Dakota is the real party in interest as a defendant herein, and that the rights and interests of the state of North Dakota will be affected by any judgment or decree herein, and is a necessary party defendant herein.

## V.

Further answering, these defendants allege that the bill of complaint herein shows on its face that it does not state facts  
75 sufficient to constitute a valid cause of action in equity.

## VI.

Further answering, these defendants admit that each of the plaintiffs is a citizen of the United States and of the State of North Dakota and that each of the plaintiffs is the owner of real and personal property in said State, and in the county in which he resides, and that each of the plaintiffs is a tax payer of the state of North Dakota and that the residences of the several plaintiffs are correctly stated in the bill of complaint herein.

## VII.

Further answering, these defendants admit that the defendants are citizens of the United States and of the state of North Dakota and are the duly elected, qualified and acting officers of the said state, as follows: Lynn J. Frazier, Governor, William Langer, Attorney General, John N. Hagen, Commissioner of Agriculture and Labor, Obert Olson, State Treasurer, Carl Kositzky, State Auditor, Thomas Hall, Secretary of State, and Minnie J. Nielson, Superintendent of Public Instruction; admit that under Section 375 of the Compiled Laws of North Dakota, the said Lynn J. Frazier, as Governor, Carl Kositzky, as State Auditor, William Langer, as Attorney General, Obert Olson, as State Treasurer, and Thomas Hall, as Secretary of State, constitute the State Auditing Board, and as su

board audit all claims against the state prior to the issuance of the State Auditor's warrant on the Treasurer in payment thereof; admit that under Section 156 of the Constitution of North Dakota, Lynn J. Frazier, as Governor, William Langer, as Attorney General, Thomas Hall, as Secretary of State, Carl Kositzky, as State Auditor, and Minnie J. Nielson, as Superintendent of Public Instruction, constitute the Board of University and School Lands, and as such have control of the investment of the permanent school fund of this state derived from the rental and sale of all school and university lands granted to the state by the United States for the support of public schools; and that under Section 162 of the State Constitution are authorized to invest such funds in state bonds; that said fund now consists of \$919,730.16 in cash, \$10,276,964.00 in municipal bonds, \$5,661,253.61 in notes secured by mortgages on farm property within the state of North Dakota, and contracts for the purchase price of land sold upon contracts, and lands which have not yet been sold, and that the aggregate of said money and property equals or exceeds in value the sum of \$50,000,000.

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## VIII.

Further answering, these defendants admit that the defendant, Obert Olson, as State Treasurer, is the custodian of the funds of the state derived from taxation, and is also custodian of the state school fund and disburses such school funds upon warrants drawn by the State Auditor; and admit that the defendant, Carl Kositzky, as State Auditor, directs the disbursements of the state funds by warrants upon the State Treasurer, and by his warrant directs the payment of the permanent school fund.

## IX.

Further answering, these defendants allege that the defendant, Lynn J. Frazier, as Governor, John N. Hagen, as Commissioner of Agriculture and Labor, and William Langer, as Attorney General, constitute the Industrial Commission of North Dakota, pursuant to House Bill No. 17 passed by the Sixteenth Legislative Assembly of the State of North Dakota, as set forth in the bill of complaint herein, and have organized and are now acting as the Industrial Commission of North Dakota, pursuant to said Act of said Legislative Assembly; and further allege that said House Bill No. 17, as set out in full in the bill of complaint herein, was duly and regularly passed and adopted by the necessary vote of the Senate and the House of Representatives of the State of North Dakota, constituting the Sixteenth Legislative Assembly of the State of North Dakota, in compliance with and in the manner provided by the Constitution of the State of North Dakota, and was, on the 25th day of February, 1919, duly approved and subscribed by the defendant, Lynn J. Frazier, as Governor of North Dakota, and the same is now a valid legislative enactment and law of said state.



## X.

Further answering, these defendants admit that the present fund in the Treasury of North Dakota, raised by general taxation for the purpose of defraying the expenses of the State government, amount to \$300,000, and that large sums are annually collected as taxes from all tax payers of the state and covered into the Treasury of the State and expended in paying the expenses of the state government; but deny that any of the defendants herein hold such funds in trust for the plaintiffs and other tax payers of the state, and deny that plaintiffs or any tax payers of the state have any beneficial interest  
 77 in such fund; and allege that any of the defendants who has the custody and control of any of such funds holds the same as agents of, and for the use of the State of North Dakota, as a sovereign political entity.

## XI.

Further answering, these defendants admit that the state of North Dakota has no moneys, funds or property, except such as has been collected by the taxation of the property of all the tax payers of the state, and moneys and property realized from schools and institutional lands granted to the state by the United States; and admit that said school and institutional lands and moneys realized therefrom cannot, under compact with the United States, be used for any purpose other than the maintenance and support of the schools and institutions of learning and other public institutions of the state; and allege that none of the defendants herein who has the custody or control of any such funds, intends to use such funds for any other purpose, or has threatened to use any of such funds for any other purpose than the maintenance and support of the schools and institutions of learning and other public institutions of the state.

## XII.

Further answering, these defendants deny that any defendant herein, as an officer of the State of North Dakota, intends or has threatened to pay out, use, or expend any of the general funds of the state, or any funds of the state raised by taxation, or any funds of any city, village, township or school district of the state, in the purchase of any of the bonds mentioned in the Bill of Complaint herein, or in the purchase of any other bonds or securities, or to expend any of such funds for any unlawful purpose.

## XIII.

Further answering, these defendants allege that Sec. 156 of Article 9 of the Constitution of North Dakota is as follows:

"The Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Auditor, shall constitute a

Board of Commissioners, which shall be denominated the 'Board of University and School Lands', and subject to the provisions of this Article and any law that may be passed by the Legislative Assembly, said board shall have control of the appraisement, sale and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the State Treasurer, under the limitations of Sec. 160 of this Article."

78 That Sec. 162 of Article 9 of the Constitution of North Dakota, as amended by Article 5 of amendment of said Constitution, provides as follows:

"The moneys of permanent school fund and other educational funds shall be invested only in bonds of school corporations or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under authority of law within the state, bonds of the United States, bonds of the state of North Dakota, bonds of other states; provided, such states have never repudiated any of their indebtedness, or on first mortgages on farm lands in this state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the Board of Appraisers of school lands."

#### XIV.

These defendants further answering deny that the defendants herein, constituting the Board of University and School Lands of North Dakota, have threatened or expressed any intention to invest in any of the bonds mentioned in the Bill of Complaint herein any of the permanent school funds or other educational funds which said Board of University and School Lands are authorized to invest; and allege that the defendants constituting the Board of University and School Lands of North Dakota will not, and do not intend to, invest any of said funds in the purchase of any bonds mentioned in the Bill of Complaint herein, unless and until such defendants shall be fully satisfied that such bonds are legal and valid bonds of the state of North Dakota, issued pursuant to law, and that the investment of such funds in said bonds would be a safe and profitable investment of such funds, and unless convinced that such defendants cannot more safely and profitably invest said funds.

#### XV.

Further answering, these defendants admit that prior to 1914, all constitutional amendments were initiated by the Legislature subject to the approval of the electors, and that such amendments were governed by Sec. 202 of the state constitution, and that the material part of said section of the state constitution is stated verbatim in section 12 of the bill of complaint herein; and admit that in 1914 said section 2 of said Constitution was amended by adding thereto

the words and language as alleged in section 12 of the bill of complaint herein.

#### XVI.

Further answering, these defendants admit that prior to the 20th day of January, 1919, Sec. 185 of the State Constitution was in force and was in the same language as alleged in paragraph 13 of the bill of complaint herein.

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#### XVII.

Further answering, these defendants allege that at the last general election held in the state of North Dakota on the 5th day of November, 1918, there was submitted to the voters thereof for their approval or rejection, a proposed amendment of Sec. 185 of the Constitution of said state, which proposed amendment reads as follows:

"Sec. 185, Article 12, as amended by Article 18 of the amendment. The State, any county or city may make internal improvements, and may engage in any industrial enterprise or business not prohibited by Article 20 of the Constitution (the manufacture and sale of intoxicating liquors), but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual association, or corporation, except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

That at said election said proposed amendment to Sec. 185 of the Constitution received a majority of all the legal votes cast at such election; and at the time appointed and provided by law, the State Board of Canvassers of the State of North Dakota ascertained and determined the result of said election upon said proposed amendment to the Constitution, and certified under their hands a statement of the whole number of votes given for and the whole number of votes given against such amendment, and determined that such amendment to the Constitution had been approved and ratified by a majority of the legal votes cast at such election, and made and subscribed on such statement a certificate that said amendment to the Constitution was duly carried and adopted, and the Secretary of State of said state recorded in his office such certified statement and determination of said state Board of Canvassers, and has caused such record to be bound in the volume containing the original enrolled laws passed at the last session of the Legislative Assembly next succeeding such determination of said Board of Canvassers.

#### XVIII.

Further answering, these defendants allege that at the Sixteenth Legislative Assembly of the State of North Dakota called and held in the city of Bismarck in said State, in accordance with the laws and constitution thereof, a concurrent resolution was passed and

adopted by the House of Representatives and the Senate of the State of North Dakota, in the manner provided by the Constitution and laws of said state, known as House Bill No. 12, in the words and language as follows:

90 "House Bill No. 12. A Bill. Concurrent Resolution. Agreeing to a proposed Amendment to the Constitution of the State of North Dakota by authorizing the state, any county or city, to make internal improvements, and to engage in any industry, enterprise or business not prohibited by Article 20 of the Constitution of the State of North Dakota; and declaring that said Amendment has become a part of the Constitution of the State.

"Be it resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

"That the following amendment to Section 185, Article 12, of the Constitution of the State of North Dakota, as amended by Article 18 of the amendments thereof, proposed by initiative petition by the people, which received a majority of all the votes cast at the general election held in this state on November 5, 1918, and referred to the Sixteenth Legislative Assembly of said state, is hereby agreed to, to wit:

"Section 185 in Article 12 as amended by Article 18 of Amendment. The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by Article 20 of the Constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

"Be it further resolved, that the said Amendment is hereby declared to have become a part of the Constitution of the State."

That said House Bill No. 12 hereinbefore set out was on the 20th day of January, 1919, duly approved and signed by the Governor of the State of North Dakota, and said Amendment to Sec. 185 of the Constitution of the State of North Dakota is now a part of the Constitution of said state.

### XIX.

Further answering, these defendants allege that at the last general election held in the state of North Dakota on the 5th day of November, 1918, there was submitted to the voters of said state in the manner provided by the law and constitution of said state, a proposed amendment to Sec. 182 of the Constitution of said state for the adoption or rejection by the electors of said state, which proposed amendment read as follows:

"Sec. 182 of Article 13. The state may issue or guarantee the payment of bonds, providing that all bonds in excess of Two Million Dollars shall be secured by first mortgages upon real estate in amounts not to exceed one-half of its value; or upon real estate or personal property of state-owned utilities, enterprises or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises or industries in excess of Ten Million Dollars. No future indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue

81 shall provide, for levying an annual tax or make other provisions, sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax, or of such other provisions, to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities."

That at said general election said proposed amendment to Sec. 182 of the Constitution of said state was approved by, and received a majority of all the legal votes cast at such election; and that said State Board of Canvassers at the time and in the manner provided by law determined and certified that said proposed amendment to Sec. 182 of the Constitution of said state had received a majority of all the legal votes cast at said election and was approved and adopted; and that a Concurrent Resolution, designated House Bill No. 9, was adopted in a manner provided by the Constitution and laws of North Dakota by the House of Representatives and the Senate of North Dakota, constituting the Sixteenth Legislative Assembly of said State, which Concurrent Resolution is, as follows:

"House Bill No. 9. A Bill. Concurrent Resolution. Agreeing to a proposed Amendment to the Constitution of the State of North Dakota by changing the debt limit thereof, and providing for issuing and guaranteeing bonds by the state, and providing that bonds issued or guaranteed by the state in excess of two million dollars shall be secured by first mortgages on certain classes of property; and declaring that said amendment has become a part of the Constitution of the State.

"Be it Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

"That the following amendment to Section 182, Article 12, of the Constitution of the State of North Dakota, proposed by initiative petition by the people, which received a majority of all the legal votes cast at the general election held in this state on November 5, 1918, and referred to the Sixteenth Legislative Assembly of said state is hereby agreed to, to wit:

"Section 182, in Article 12. The state may issue or guarantee the payment of bonds, providing that all bonds in excess of two million dollars shall be secured by first mortgages upon real estate in amounts not to exceed one-half of its value; or upon real and personal property of state-owned utilities, enterprises or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises or industries in excess of ten million dollars.

"No future indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provisions, sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax, or of such other provisions, to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities.

"Be It Further Resolved, that the said Amendment is hereby declared to have become a part of the Constitution of the State."

And that on the 20th day of January, 1919, said Concurrent Resolution, known as House Bill No. 9, was approved and signed by the Governor of the State of North Dakota; and that the determination and certificate of said State Board of Canvassers that said proposed amendment to Sec. 182 of the Constitution of said state had been approved and adopted; and such proposed amendment to the Constitution has been by the Secretary of State of said State, bound in the volume containing the original enrolled laws passed at the Sixteenth Session of the Legislative Assembly of the State of North Dakota, being the session of said legislative assembly next succeeding said action of said State Board of Canvassers; and that said Sec. 182 of said Constitution has been duly and legally amended as herein set forth.

## XX.

Further answering, these defendants allege that the question whether an Amendment to the Constitution of the state has been approved or adopted by the electors thereof, is not a judicial question, but is a political question; and that the political department, power and authority of the state of North Dakota has determined that Sec. 182 and Sec. 185 of the Constitution of said state has each been amended, as hereinbefore set forth, and that the amendments of said sections of the Constitution as hereinbefore set forth have been adopted and approved by the electors of said state.



## XXI.

Further answering, these defendants admit, that the Sixteenth Legislative Assembly of the State of North Dakota duly and legally passed, in a manner prescribed by the Constitution of said state, the several legislative acts set out in full in paragraph 17 of the bill of complaint, and designated therein as follows:

- 83      House Bill No. 17, as "The Industrial Commission Act."  
           House Bill No. 18, as "The Bank of North Dakota Act."  
           House Bill No. 49, as "The Bank of North Dakota Bond Act."  
           Senate Bill No. 130, as "The Bank of North Dakota, Real Estate Act."  
           Senate Bill No. 20, as "The Mill & Elevator Ass'n Act."  
           Senate Bill No. 75, as "The Mill & Elevator Ass'n Bond Act."  
           Senate Bill No. 19, as "The Home Builders' Act."

## XXII.

Further answering, these defendants admit that the defendants Lynn J. Frazier, William Langer, and John N. Hagen, officers of the State of North Dakota, claim the right and authority to act under the provisions of the constitutional amendments herein stated and the Industrial Commission Act set out in the bill of complaint herein, and have organized, and now claim to be a lawful organized body under the name of "The Industrial Commission of North Dakota"; and further admit that said Commission and the defendant designated by the Industrial Commission Act mentioned, intend to and will expend the money appropriated by said act, or so much thereof as may be necessary to comply with and carry into effect the provisions of said Act, designated in the bill of complaint, the Industrial Commission Act; and admit that said Industrial Commission and the members thereof have employed a Secretary of said Commission at a salary of \$3600 per annum, and intend to and will engage in and undertake all of the different enterprises and business projects especially provided for under the said acts of the Legislature set out in the bill of complaint herein, but deny that said Industrial Commission and the members thereof have commenced the organization of any of the special businesses mentioned in said Acts of the Legislature, except the organization of the Bank of North Dakota, as provided for in said "Bank of North Dakota Act"; and admit that said Industrial Commission has employed a manager for said Bank who is authorized to complete the organization and begin the operation thereof; and allege that the salary of said manager of said Bank is fixed at \$4,000 per annum, and not at \$5,000 per annum as stated in the bill of complaint herein; and admit that said Industrial Commission intends to commence and carry on the operation of said Bank, and will use and expend so much of the money appropriated by the Bank of North Dakota Act as is necessary to establish said Bank.

Admit that said Industrial Commission and the members thereof intend to proceed to carry out the provisions of the Bank of North Dakota Bond Act set out in the bill of complaint herein, and in so carrying out said provisions will expend so much of the 84 appropriations provided in said Act as is necessary to carry out the provisions thereof; and intend to carry out the provisions of the Bank of North Dakota Real Estate Bond Act as set out in the bill of complaint herein, and will expend so much of the money appropriated by said Act as is necessary to carry out the provisions of said Act; and intend to and will proceed to establish a system of warehouses, elevators, flour mills, factories, plants, etc., according to the provisions of the Mill & Elevator Association Act, as set out in the bill of complaint herein, and intend to and will proceed to acquire according to the provisions of said Act, by purchase, or by the virtue of the law of eminent domain, such property within the state of North Dakota, according to the terms of such Act, as may be necessary for carrying out the provisions of said Act; but deny that said Industrial Commission intends to establish any warehouses, elevators, flour mills, factories or other plants outside of the state of North Dakota, or to acquire any property for the purpose of carrying out the provisions of said Act, except in the manner provided by said Act; and admit that said Industrial Commission will expend so much of the money appropriated by said Act as is necessary in carrying out the provisions of said Act; and admit that said Industrial Commission and the members thereof intend to and will proceed to carry out the provisions of the North Dakota Mill & Elevator Association Bond Act, as the same is set forth in the bill of complaint herein, and intend to and will expend so much of the money appropriated by said Act as is necessary to carry into effect the provisions thereof; and intend to and will proceed to carry out the provisions of the Home Builders' Act, as the same is set out in the bill of complaint herein, and intend to and will expend so much of the money appropriated by said Act as is necessary to carry into effect the provisions of the legislative acts set forth in the bill of complaint herein will be taken from the funds of the state of North Dakota available therefor, according to said legislative acts; but do not know and are unable to ascertain at this time how much money it will be necessary to expend in carrying out the provisions of said Act.

## XXIII.

Further answering, these defendants admit that the defendant, Obert Olson, as State Treasurer intends to and will prepare for issue, and the defendant Lynn J. Frazier, as Governor, with said Obert Olson as State Treasurer will execute and issue negotiable bonds of 85 the State of North Dakota in the aggregate amount of Two Million Dollars, pursuant to the said Bank of North Dakota Bond Act, and the defendant, Thomas Hall, Secretary of State, will attest the same and with the defendant Carl Kositzky, State Auditor, will certify to said bonds so executed, as provided in said Bank of North Dakota Bond Act, and that said bonds will be known and

designated as, "Bonds of North Dakota, Bank Series", and said bonds will be delivered to said Industrial Commission and by said Commission negotiated and sold, and that there will be thereby a liability against the state of North Dakota in the sum of Two Million Dollars; but deny that said liability can only be met and liquidated by moneys raised by taxation against the people and property in the state of North Dakota, and allege that said Bank of North Dakota Bank Act makes provision for the payment of said bonds and interest thereon from the profits and dividends of the Bank of North Dakota provided for in the legislative acts mentioned; and deny that said liability will in any way be in violation of the fundamental principles of a republican form of government, or any provision of the Constitution of the United States.

Admit that the defendants named in this paragraph intend to execute, issue, attest, and certify bonds of the state of North Dakota under the provisions of the Bank of North Dakota Real Estate Bond Act, hereinbefore mentioned; but allege that said bonds will be executed, issued, attested and certified only in the manner provided, and upon the terms and conditions mentioned in said Bank of North Dakota Real Estate Bond Act, and only when real estate mortgages to secure payment of said bonds have been deposited with the Treasurer of the State, as provided in said Act.

Admit that the defendants named in this paragraph intend to and will execute, issue, attest and certify bonds of the state of North Dakota under the provisions of said Mill and Elevator Association Bond Act; but allege that no such bonds will be executed, issued, attested or certified until the payment of the same has been secured by first mortgages upon the property of the North Dakota Mill and Elevator Association, as provided in said Acts herein referred to.

#### XXIV.

Further answering, these defendants say, that they do not know, and are not at this time able to ascertain the aggregate amount of bonds that will be executed and issued under the provisions of the

86 Bank of North Dakota Real Estate Bond Act, or under the provisions of the North Dakota Mill and Elevator Association Bond Act; but allege that no bonds will be issued or executed under either of said Acts, except in the amounts, and in the manner provided in said Acts, or until the payment of said bonds have been secured by mortgages as provided in said acts; and deny that any bonds issued pursuant to said Bank of North Dakota Real Estate Bond Act, or said Mill and Elevator Association Bond Act will constitute a liability which can only be met and liquidated by moneys raised by taxation against the people and property of the state of North Dakota, and allege that the payment of said bonds will be secured by mortgages upon tangible assets before any of such bonds are issued or executed.

## XXV.

Further answering, these defendants allege that the state of North Dakota is by its Constitution and laws authorized to engage in business enterprises, and that any business enterprise in which the state of North Dakota so engages becomes a public purpose, and any net profits arising from the conduct of said business becomes the property of the state of North Dakota and can be used in the payment of the expenses of maintaining the state government, and to that extent diminish the burden of general taxation upon the people and property of the state; and deny that any business or enterprise which the Industrial Commission is authorized by the laws herein mentioned to carry on, is for the benefit of any person or persons other than the state of North Dakota.

## XXVI.

Further answering, these defendants admit that the area, population, number of counties, railroad mileage, number of incorporated cities and villages and hamlets, number of railroad stations, sidings, and mercantile establishments, number of flour mills and the capacity thereof, number of licensed and private owned warehouses and elevators and the capacity thereof, the number of state and national banks and the capital stock and surplus of the same, number of loan and trust companies and loan agencies, the number of building and loan associations, number of acres of unbroken prairie used for grazing and stock raising are as alleged and set out in paragraph 22 of the bill of complaint herein.

## XXVII.

Further answering, these defendants admit that the present occupation of the rural population of North Dakota is that of grain growing, dairying and stock raising; but deny that the large portion of the tax payers of the state, and the owners of a large part of the taxable property of the state are in no manner interested in any of the business enterprises or projects authorized and provided for by the legislative acts mentioned in the bill of complaint herein.

## X-VIII.

Further answering, these defendants deny that if the state of North Dakota engages in the various enterprises and industries as provided in the legislative acts set out in the bill of complaint herein, the plaintiffs or any tax payer of said state will suffer any injury or damage, or be denied the equal protection of the law, or that they will be denied the protection of Sec. 4 of Article 4 of the Constitution of the United States, guaranteeing to each state and the citizens thereof a republican form of government; and allege that nothing contained in any of said legislative acts tends to change in any

manner the form of government of the state of North Dakota, or tends to prevent the election of officers of said state by vote of the people, or to deprive said state from maintaining legislative, executive and judicial departments, the officers of which are elected by the people.

## XXIX.

Further answering, these defendants allege that for the state of North Dakota to engage in the business and enterprises as provided in the legislative acts mentioned in the bill of complaint herein, will be for the financial benefit of all the tax payers of the state of North Dakota, for the reason that the net profits and earnings of all said business and enterprises will belong to the state of North Dakota to be used in defraying the expenses of the government of said state, thus reducing the rate of general taxation; that the price received by the tax payers of the state of North Dakota for such raw material as will be used, such enterprises will be increased, and the price at which manufactured products produced by said enterprises will be sold to the citizens and tax payers of North Dakota will be reduced, and the rate of interest at which the citizens and tax payers of the state can borrow money will be reduced, and that every citizen and tax payer of the state of North Dakota will be financially benefited by the economic program provided for by said legislative acts.

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## XXX.

Further answering, these defendants deny all and all manner of unlawful acts whatsoever whereof they are in any wise by the bill of complaint herein charged, all of which manner and things these defendants are ready and willing to prove as this honorable Court shall direct.

## XXXI.

Further answering, these defendants pray in all things, the same benefit and advantage of this, their answer, as if they had pleaded and demurred to said bill of complaint.

Wherefore, And in consideration of which these defendants pray that the plaintiffs' prayer for a temporary restraining order to issue against these defendants be denied; that the bill of complaint of plaintiffs be dismissed; that these defendants be hence dismissed with reasonable cause and charges in this behalf most wrongfully sustained.

(Signed)

WILLIAM LANGER,  
*Attorney General for the State of North Dakota,*  
*Solicitor for Defendants.*

(Signed)

S. L. NICHOLS,  
CHESTER A. MARR,  
*Attorney- for the Board of University and*  
*School Lands,*  
*Of Counsel.*

*Notice.*

Filed April 15, 19-9.

(Title of Case.)

To John W. Scott and each of the other plaintiffs in the above entitled cause and to Messrs. N. C. Young, J. S. Watson, E. T. Conmy, Tracy R. Bangs, Philip R. Bangs, C. J. Murphy, and T. A. Toner, counsel for said plaintiffs:

Please take notice that the defendants, Lynn J. Frazier and John N. Hagen, individually; Lynn J. Frazier as Governor of the State of North Dakota; John N. Hagen as Commissioner of Agriculture and Labor of the State of North Dakota; and Lynn J. Frazier, William Langer and John N. Hagen, acting as the Industrial Commission of North Dakota, being certain of the defendants in the above entitled action, will, on the 25th day of April, 1919, or as soon thereafter as counsel can be heard, submit to the above entitled court at Fargo, North Dakota, the motion of said last mentioned defendants, pending in this cause, to dismiss this action, a copy of which is attached to this notice.

WILLIAM LEMKE,

*Solicitor for said Moving Defendants.*

*Admissions of Service.*

Copy of the within instrument received and service hereby admitted, this twelfth day of April, A. D. 1919.

J. S. WATSON,

WATSON, YOUNG & CONMY,

*Plaintiffs' Attorneys.*

Copy of the within instrument received and service hereby admitted this fourteenth day of April, A. D. 1919.

TRACY R. BANGS.

PHILIP R. BANGS.

C. J. MURPHY.

T. A. TONER.

*Motion to Dismiss.*

Filed April 25, 1919.

(Title of Case.)

Comes now the defendants and move the court to dismiss the bill of complaint of plaintiffs herein upon the points of law presented by the answer herein, and to dismiss this motion for the following reasons:



First. The court is without jurisdiction to hear and determine this action because:

(4) The bill of complaint shows on its face that it is in effect an action against the sovereign State of North Dakota and fails to show that the State of North Dakota has consented to be sued in this action.

(b) The bill of complaint fails to show that the matter in controversy, or cause of action, alleged therein arises under the laws or the Constitution of the United States.

(c) The bill of complaint fails to show that the interests of any one of the plaintiffs in the matter in controversy exceeds in value the sum of three thousand dollars (\$3,000.00) and shows that the plaintiffs form a class of parties who have relation to the common fund sought to be administered.

Second. That there is a non-joinder of parties defendant to this action, for the reason that the bill of complaint on its face shows that the State of North Dakota is the real party defendant, and the State of North Dakota is not made a party defendant to the action and said State cannot be made a party defendant.

Third. That the bill of complaint does not state facts sufficient to constitute a valid cause of action in equity.

WILLIAM LANGER, ·

*Attorney General of the State of North Dakota.*

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*Amended Motion to Dismiss.*

Filed May 2, 1919.

(Title of Case.)

Now come Lynn J. Frazier and John N. Hagen, individually; Lynn J. Frazier as Governor of the State of North Dakota; John N. Hagen as Commissioner of Agriculture and Labor of the State of North Dakota; and Lynn J. Frazier, William Langer and John N. Hagen, acting as the Industrial Commission of North Dakota, being certain of the defendants in the above entitled action and move the court to dismiss this action and that they take their costs in this suit incurred for the following reasons:

1. Because it appears in the complaint filed in this cause that there is insufficiency of fact to constitute a valid cause of action in equity against these defendants or any of them and that said complaint fails to allege facts constituting such cause of action.

2. Because it appears in the complaint filed in this cause that this Honorable Court has no jurisdiction of the subject matter of the pretended cause of action set forth in said complaint.

The said action is made upon the bill of complaint and all the cases and proceedings herein and upon all matters of which said court will take notice, including among others certain matters of record, to-wit:—

1. In 1893 the legislature of North Dakota passed a bill providing for the purchase of a site and for the erection of a state elevator at Duluth, Minnesota, Superior, or West Superior, Wisconsin, for public storage and the shipment of wheat, and the regulation thereof, and appropriated \$100,000 for this purpose. This bill was approved by the Governor on March 17, 1893. Session Laws of North Dakota 1893, p. 165.
2. In 1909 the legislature of North Dakota passed a concurrent resolution proposing an amendment to the Constitution of the State of North Dakota, empowering the legislative assembly to provide by law for the erection, leasing purchasing and operating of terminal elevators in the states of Minnesota and Wisconsin, or either. Session Laws of North Dakota 1909, p. 344.
3. In 1911 the legislative assembly again passed the above resolution proposing a constitutional amendment authorizing the legislative assembly to provide by law for the erection, leasing, purchasing and operating of terminal elevators in the states of Minnesota and Wisconsin, or either. Session Laws of North Dakota 1911, p. 161.
4. This proposed amendment to the constitution was then submitted by the Secretary of State for approval or rejection to the electors of the state at the general election of 1912, and was adopted by an overwhelming majority.
5. In 1911 the legislature of North Dakota passed another concurrent resolution proposing a constitutional amendment, empowering the legislative assembly to provide by law for the erection, leasing, purchasing and operating of terminal elevators in the state of North Dakota. Session laws of North Dakota 1911, p. 165.
6. The resolution last above mentioned was again passed by the legislative assembly in 1913. Session Laws of North Dakota 1913 p. 132.
7. In 1913 the concurrent resolution proposing amendment to the Constitution last above referred to was again passed by the legislative assembly. Session Laws of North Dakota 1913, p. 132.
8. Thereupon the Secretary of State caused the same to be submitted to the electors for their approval or rejection at the general election of 1914 and it was adopted by a vote of 51,507 for and 18,483 against.
9. In 1913 the legislature of North Dakota passed an act to provide funds for the erection, purchase, lease or establishment of a terminal elevator system in the state of Wisconsin or in the state of Minnesota or in both said states and for the maintenance and oper-

ation of the same and for the establishment of additional duties of the Board of Control of state institutions in relation thereto, 93 and levied a tax of one-eighth of a mill upon all taxable property of the state to provide such fund. Session Laws of North Dakota 1913, p. 435.

10. In 1913 the legislature of North Dakota passed an act amending the act last above mentioned and levying a tax upon all taxable property within the state, real and personal, for the year- 1915 and 1916 and during each of said years the sum of \$1,000 to be used for the erection, purchase, equipment, maintenance and operation and an investigation of the practicability of terminal elevators in the states of Minnesota, North Dakota or Wisconsin. Session Laws of North Dakota 1915, p. 380.

11. In 1917 the legislature again passed an act to provide for the creation of a commission, the selection of a location, erection, leasing, operating and renting or selling of one or more terminal elevators either within or without the state of North Dakota and making an appropriation therefor. This, the Governor vetoed, as a subterfuge and as not complying with the platform for state-owned elevators and flour mills, upon which he was elected, as stated in his veto. Session Laws of North Dakota 1917, p. 302.

12. In 1916 and in 1918 the republican platform upon which the present state administration was elected, both times by an overwhelming majority, advocated unequivocally rural credit banks state-owned terminal elevators and flour mills, packing plants, etc.

13. In the spring of 1917 a petition containing the names of over 47,000 electors of the state was filed with the Secretary of State, initiating an amendment to the constitution, authorizing "the state, any county or city to make internal improvements and to engage in any industry, enterprise or business not prohibited by Article 20 of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or co-poration except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

94 This amendment was submitted by the Secretary of State to the electors and was approved by an overwhelming majority.

14. During the primary and general elections of 1916 and 1918 the principal issues in the campaigns were the building and operation by the state of terminal elevators, flour mills, packing plants and other public utilities, state hail insurance and rural credit banks.

15. In 1915 the legislature of North Dakota passed a concurrent resolution proposing amendment to the constitution, providing for the levy of a tax on such lands of the state as may be provided by law to create a fund to insure the owners of growing crops against loss by hail. Session Laws of North Dakota 1915, p. 113.

16. In 1915 the legislature passed a concurrent resolution proposing amendment to the constitution, relating to loans, giving credit or aid by the state or political subdivisions, or to the agricultural loans, properly known as rural credits.

17. In 1917 the legislature again passed a concurrent resolution, relating to state hail insurance and providing for the levying of a tax upon land. Session Laws of North Dakota, p. 101.

18. In 1911 the legislature passed an act establishing a state hail insurance department, which has been successfully operated by the state up to date. Session Laws of North Dakota 1911, p. 26.

19. In 1913 the legislature re-enacted and amended the hail insurance act, which act has been further amended by the legislature of 1919.

WM. LEMKE,  
*Fargo, North Dakota,*  
*Solicitor for Said Defendants.*

FREDERIC A. PIKE,  
*St. Paul, Minnesota,*  
*Of Counsel.*

95 *Stipulation for the Dismissal of the Board of University and School Lands.*

Filed June 12th, 1919.

(Title of Case.)

Come now the plaintiffs, in the above entitled action, and move to dismiss, and do now dismiss, the above entitled action as to the Board of University and School Lands, and as to the members of such Board, to-wit: Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky and Minnie J. Nielson in their capacity as members of said Board, and without prejudice to the continuation of this action against the said Lynn J. Frazier, William Langer, Thomas Hall and Carl Kozitsky in the character in which they are otherwise named in the bill of complaint, and without prejudice to the plaintiffs' demand for relief in this action, excluding only relief asked against the Board of University and School Lands and the members.

Dated this 22nd day of May, 1919.

J. S. WATSON,  
N. C. YOUNG,  
E. T. CONMY,  
TRACY R. BANGS,  
PHILIP R. BANGS,  
C. J. MURPHY AND  
T. A. TONER,  
*Solicitors for Plaintiffs.*

*Acceptance of Service.*

Service of the above Motion to Dismiss as to the Board of University and School Lands, and the members thereof, is accepted this 23rd day of May, 1919, and consent is given to the entry of an order dismissing the action as to the Board of University and School Lands, and the members thereof, in this action.

WILLIAM LANGER,  
*Attorney General, and Attorney for  
Board of University and School Lands,  
and the Members Thereof.*

96     *Order Dismissing as to Board of University and School Lands.*

Entered June 12th, 1919.

(Title of Case.)

Upon a stipulation this day filed herein it is ordered that this case be dismissed as against the Board of University and School Lands, and as to the members of such Board, to-wit: Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky and Minnie J. Nielson, in their capacity as members of said board, and without prejudice to the continuation of this action against the said Lynn J. Frazier, William Langer, Thomas Hall and Carl Kozitsky in the character in which they are otherwise named in the bill of complaint, and without prejudice to the complainants' demand for relief in this action, excluding only relief asked against the Board of University and School Lands and the members thereof.

*Opinion of the Court.*

Filed June 14th, 1919.

(Title of Case).

97     N. C. Young, Esq., J. S. Watson, Esq., E. T. Conmy, Esq., of Fargo, North Dakota, and Tracy R. Bangs, Esq., Phillip R. Bangs, Esq., C. J. Murphy, Esq., T. A. Toner, Esq., of Grand Forks, North Dakota, Solicitors for Plaintiffs. Wm. Lemke, Esq., of Fargo, North Dakota, and Frederick A. Pike, of St. Paul, Minnesota, Solicitors for the Industrial Commission of the State of North Dakota. Hon. William Langer, Attorney General, of Bismarck, North Dakota; Hon. S. L. Nichols, of Mandan, North Dakota, and Hon. W. S. Lauder, of Wahpeton, North Dakota, Solicitors for the other Defendants.

This is a suit in equity to restrain the defendants, (a) from paying out public funds in the state treasury amounting to several hundred thousand dollars; (b) from issuing bonds of the state for

much larger amount; and (c) to have two amendments of the state constitution and the statutes authorizing the above payments and bonds declared null and void. It is charged in the bill that the payments are to be made, and the bonds issued, for private, as distinguished from public purposes; that they will result in creating debts which can only be paid by taxes upon the property of the citizens of the state.

The plaintiffs are forty-two taxpayers, and bring this suit on behalf of themselves and all other taxpayers. They are all citizens and residents of the state of North Dakota. This is also true of the defendants, so jurisdiction cannot be rested on diversity of citizenship.

The jurisdiction of this court is based upon two facts. First, that the amount in controversy exceeds the sum or value of \$3,000; and second, that the suit arises under the Fourteenth amendment of the Federal Constitution. A case showing both these features must be made out by the bill; otherwise the court is without jurisdiction, and the motion of defendants to dismiss should be granted.

Plaintiffs rest their claim of the first element of jurisdiction namely, that the amount in controversy exceeds the sum or value of \$3,000., upon two grounds:

1. They assert that the suit is brought on behalf of the state to protect it against the unconstitutional use of its funds and an unconstitutional issue of bonds. That being the nature of the suit, it is claimed that the entire fund is the amount in controversy and not the right or possible damage of the plaintiffs. This theory presupposes that the state has rights that are protected by the Fourteenth Amendment. If it has no such right, plaintiffs have no standing in this court as its representatives and must stand on their own feet. Has the state then any rights under the Fourteenth amendment. That question must be answered in the negative. The amendment protects only the rights of "persons." This term has been enlarged by judicial interpretation so as to cover private corporations. It does not embrace public corporations, much less the state. Its language is: "Nor shall any state deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws." It would be a perversion of language to say this language protects the state against acts of the state. It protects persons only, a term which embraces private corporations but not public corporations or states. It follows, therefore, that plaintiffs, while they asserts rights under the Fourteenth Amendment, cannot assert rights of the state because it has no rights that are protected by that amendment. It necessarily results that plaintiffs in this suit represent only themselves.

2. Plaintiffs assert that in suits to restrain an unconstitutional use of public funds, or issue of bonds, or levy of tax, the amount of the funds or of the bonds or of the tax is the measure of the "amount" in controversy and not the injury to plaintiffs. There



is some language in the cases which supports that view. It is, however, at variance with the decision of the Supreme Court in *Colvin vs. Jacksonville* 158 U. S., 456, and with the uniform practice in Federal Courts since that decision has become known to the profession. That was a taxpayers' suit. It was brought to restrain a threatened issue of bonds for one million dollars. It was proven that the amount of taxes which would be levied on plaintiff's property in case the bonds were issued would be less than \$2,000, the amount then necessary to confer jurisdiction, and the trial court dismissed the bill for want of jurisdiction. Plaintiff insisted that the amount of the bond issue, and not his tax liability, was "the amount in controversy," and at his instance the court certified the question of jurisdiction to the Supreme Court. Anyone who will read the certificate as set forth at page 458 of the report, will see that the exact question involved under this heading of the present case was there presented to the Supreme Court. In deciding it, the court says, at page 460: "This leaves the only question to be considered whether the amount of the interest of complainant, and

not the entire issue of bonds, was the amount in controversy, 100 and, in respect of that, we have no doubt the ruling of the Circuit Court was correct." The court then examines *Brown vs. Truesdale*, 138 U. S., 389, which was cited to me by counsel for the plaintiffs, and then orders decree affirming the decision of the lower court. It is plain, therefore, that the court there regarded *Brown vs. Truesdale* as in harmony with the decision which it was rendering, or that its language ought to be qualified so as to bring it into harmony.

The case of *Colvin vs. Jacksonville*, supra, is not referred to by the Circuit Court of Appeals of this circuit in its opinion in *City of Ottumwa vs. City Water Supply Company*, 119 Fed. 315.

Plaintiff's interest in the *Ottumwa* case was sufficient to confer jurisdiction, so the language in the second paragraph of the opinion on page 318 was obiter, and, as it is in direct conflict with the decision in the *Colvin* case, must be treated as an erroneous statement of the law.

*Colvin vs. Jacksonville* has never been qualified or criticised by the Supreme Court or any circuit court of appeals. From the date of that decision to the present time it has been the uniform practice in taxpayers' suits to restrain an issue of bonds, or a levy of taxes, to show that plaintiffs' threatened damage was sufficient to confer jurisdiction. The latest decision on the subject is *Greene vs. Louisville & Interurban Railroad Co.*, 244 U. S., 499-508. See also *Orleans-Kenner Electric R'y Co. vs. Dunbar* 218 Fed. 344; *Cowell vs. City Water Supply Co.*, 121 Fed. 53, and *Resley vs. Utica*, 168 Fed. 737.

In suits to enjoin a threatened tax levy, and that is the nature of the suit here, in all its aspects, the authorities are uniform that the individual plaintiffs must each have an interest to the 101 amount of \$3,000., and that several plaintiffs cannot aggregate their interests for the purpose of making up the \$3,000. *Wheelees vs. City of St. Louis*, 96 Fed. 865; same case, 180 U. S. 399; *Rogers vs. Hennepin Co.*, 239 U. S. 621.

How then are the numerous cases referred to in Dillon on Municipal Corporations, 5th Edition, Section 1579, et seq., and cited to the court in argument, to be explained? That is not difficult. None of them asserts rights under the Fourteenth Amendment. They all involve cases in which cities were attempting to levy taxes or issue bonds in violation of state laws or state constitutions. With the exceptions presently to be mentioned, the cases all arose in state courts. There it is not necessary for a plaintiff to show any particular amount as the basis of jurisdiction. Taxpayers may sue in the state courts, and claim the protection of the Fourteenth Amendment without showing that they have a personal interest amounting to \$3,000. The only object of the averment that they are taxpayers is simply to show that they are not intermeddlers. If the state courts deny to taxpayers thus asserting rights under the Fourteenth Amendment, a writ of error to the Supreme Court of the United States will lie to review the decision. This distinction must be kept constantly in mind in examining decisions of the Supreme Court: Was the case brought before that court by writ of error from the highest court of the state, or by writ of error or appeal to review the decisions of a Federal, Circuit, or District Court. In one case the amount involved is immaterial, and in the other it is controlling.

It remains to notice two cases which are relied on by plaintiffs. The first is *Crompton vs. Zabriski*, 101 U. S., 601. That involved an issue of bonds by the county of Hudson in the State of New Jersey for several hundred thousand dollars.

102 The bonds were illegal because no provision for their payment by tax levy was made as the law required. On certiorari to the board issuing the bonds, a judgment was entered by the Supreme Court of the state, declaring them void. Notwithstanding this judgment, the bonds were issued to the plaintiff, Crompton. He then brought an action at law to collect the bonds in the Federal Court. Jurisdiction of this action was based upon diversity of citizenship and the complaint showed the requisite jurisdictional averment. Zabriski and two other resident taxpayers of the county then filed a bill of complaint on the equity side of the Federal Court, praying that the bonds be declared void, and be delivered up, and that the board be ordered to reconvey the property to Crompton, and that he be enjoined from prosecuting the action at law or parting with the bonds in any other way than by surrendering them to the board. This bill, was, of course, ancillary, and jurisdiction of the Federal Court to entertain it rested upon its jurisdiction over the action brought by Crompton. Such being the nature of the suit, two facts are clear: First, that the taxpayers' rights were based on a violation of state law, and not on the Fourteenth Amendment. Second: That jurisdiction of the court was based on the original action brought by Crompton, and the complaint in that clearly showed a right in the plaintiff sufficient to confer jurisdiction. What the court says in the passage quoted by counsel about the right of taxpayers to maintain a suit in equity to prevent an illegal disposition of the moneys of the county, or the illegal creation of a debt, is addressed to the question whether taxpayers have a right to maintain

such a suit to protect their own interests, and has nothing to do with the question for which the quotation was cited in argument here, namely, the right of taxpayers to assert rights of the state, or of a city. Mr. Justice Field in the language used, is answering the contention that a taxpayer under no circumstances can maintain such a suit. Such is the holding of the courts of New York and several other state courts. Dillon on Municipal Corporations, 5th Edition, Section 1585.

The other cases cited by plaintiffs here is *Daveport vs. Buffington*, 97 Fed., 234. That came before the Circuit Court of Appeals of this Circuit on appeal from the Supreme Court of the Indian Territory. It involved therefore no question of jurisdiction of the trial court, as a Federal Court, depending upon a showing that the plaintiff had a right of the value of \$3,000. The suit was brought by taxpayers to prevent the use of property which had been given to the city for a park for other purposes. The taxpayers filed their bill to enforce this trust. No right is asserted under the Fourteenth Amendment. The passage quoted simply goes to the general question of the right of taxpayers to maintain suits in equity to prevent a misuse of property or funds belonging to a city.

It may be doubted whether taxpayers may maintain a suit against state officers to vindicate alleged rights of a state. I have been unable to find any authority that would support such a doctrine. Such suits have been confined to actions against municipal officers to vindicate the rights of cities. Such are all the cases cited by Judge Dillon in his work on Municipal Corporations, Section 1579. The reasons which permit such suits in the case of municipal corporations has no application to states. Municipal corporations exist under special charters and have only such powers of taxation as are specifically conferred upon them. They have many of the qualities of a private corporation and the right to maintain taxpayers' suits has been rested upon the same ground as the right of stockholders to maintain similar suits in behalf of a private corporation. States are not municipal corporations. Their powers are not defined by charter. They possess all powers except as they are limited by the state and federal constitutions. This is especially true of their power to tax. The power to maintain taxpayers' suits even against municipal officers has been denied by the courts of New York, Massachusetts and several other states. Dillon, Sec. 1585, et seq. I can find no justification for extending the doctrines to actions against state officers.

From this examination, the conclusion necessarily follows that plaintiffs must show a personal interest amounting to \$3,000. in order to give this court jurisdiction, and as no such showing is made in the present bill, the jurisdiction of the court as a federal court fails.

The other jurisdictional element presents the question whether the bill shows a case arising under the Fourteenth Amendment. That depends on whether the purpose for which the laws here assailed seek to use the taxing power is private or public. When a state enters a new field of taxation, as North Dakota has

in these laws, that question is always raised. It was urged against laws to establish public schools, and publicly owned water, gas and electric plants, with the same vehemence as it is now urged against the present laws. The line of legislative power has been steadily advanced as society has come to believe increasingly that its welfare can best be promoted by public as distinguished from private ownership of certain business enterprises. Laws which at one time were held invalid have at a later period been sustained by the same court. No judge can investigate judicial decisions rendered during the past ten years without being impressed with the rapid extension of state activity into fields that were formerly private. The twilight zone that separates here permissible from forbidden state action is broad. Business which will seem to one court to be public will seem to another to be private. The decisions on the subject are cited and analyzed by the Supreme Court of Louisiana in the recent case of Union Ice and Coal Co. — Rustan 135 La. 898; L. R. A. 1915, 859; 66 So. 262. See also Yale Law Journal 824-236 for a scholarly examination of the subject.

McQuillan on Municipal Corporations, Section 1809 and the 5th Edition of Dillon on Municipal Corporation, Volume 3, Section 1292, which contain the last word of text writers on the subject, solemnly inform us that cities cannot be authorized to establish publicly owned coal and wood yards because that would be using the taxing power for a private purpose. The next edition of these works will strike out this language and inform us that such yards are permissible because they are for a public purpose and are publicly owned, citing Jones vs. Portland, 245 U. S. 217. Thus "can" succeeds "can't" in this field of law so rapidly that one can hardly tell which word he is looking at.

What may be done by the state to protect its people and promote their welfare, cannot be declared by a priori reasoning. New evils arise as a result of changing conditions. If the state remains static while the evils that afflict society are changing, and dynamic, the state soon becomes wholly inadequate to protect the public. The state must be as free to change its remedies as the evils that cause human suffering are to change their forms. Merrick vs. Halsey Co. 242 U. S. 568-588.

There are a few great landmarks by which to determine whether laws authorizing taxation are for a public or a private purpose. We shall find our way best by first looking at them.

1. The power of taxation is legislative. The right of the people to determine the amount and purpose for which taxes may be levied has for centuries in this country and in England been regarded as the peculiar prerogative of the representatives of the people in their legislative bodies. As Marshall said in McCulloch vs. Maryland, 4 Wheaton, 316, 428; "The only security against the abuse of the power of taxation is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation. The people of a state, therefore, give to their government a right of taxing themselves and their property; and as the exi-

agencies of the government cannot be limited, they prescribe no limits to the exercise of the right, resting confidently on the interests of the legislature, and on the influence of the constituents over their representatives to guard them against its abuse." This language has been qualified by later decisions of the Supreme Court holding that a tax must be for a public purpose or it is a deprivation of property without due process of law and that the final decision of whether a tax is for a public purpose is for the courts and not the legislature. It is nevertheless true that the presumption that a law is constitutional is applied with unusual force in favor of laws passed in the exercise of the power of taxation. The power of taxation lies in a field of even broader legislative discretion than the "police power" under which constitutional questions have been more frequently raised.

2. This presumption in favor of laws imposing taxes is, as Judge Cooley says, in his work on taxation, (3rd Edition, page 185) "applicable with peculiar force to the case of a legislative decision upon the purpose for which a tax may be laid. For in the first place there is no such thing as drawing a clear and definite line of distinction between purposes of a public and those of a private nature. Public and private interests are so commingled in many cases that it is difficult to determine which predominates; and the question whether the public interest is so distinct and clear as to justify taxation is found embarrassing to the legislature, and no less so to the judiciary. \* \* \* To justify the court in declaring the tax void, the absence of all possible public interest in the purpose for which the funds are raised must be clear and palpable, so clear and palpable as to be perceivable by every mind at first blush."

3. "Limitations or restrictions upon the exercise of this essential power of sovereignty can never be raised by implication, but the intention to impose them must be expressed in clear and unambiguous language." Cooley on Taxation, page 177. What constitutes a public purpose will vary in different communities and different periods. *Fallbrook Irrigation District vs. Bradley*, 164 U. S. 112; *Clark vs. Nash*, 198 U. S. 362; *Oneil vs. Leamer*, 239 U. S. 244, 253; *Noble State Bank vs. Haskell*, 219 U. S. 10.

4. The Fourteenth Amendment contains no express language limiting the taxing power of states. Laws have been condemned by holding that a tax for a purely private purpose deprives the taxpayer of his property without due process of law. When is a tax for a "purely private purpose" within this rule?

a. The only cases in the Federal courts in which laws have been condemned are those in which bonds or public funds were given as a mere gratuity to a privately owned manufacturing enterprise to encourage its establishment within the city. Such are the cases cited by counsel for plaintiff, *Loan Association vs. Topeka* 20 Wall. 655; *City of Parkersburg vs. Brown* 106 U. S. 487; *Cole vs. City of La Grange* 103 U. S. 1; *Dodge vs. Mission Township*, 107 Federal 827.

b. I have not been able to discover any instance in which the Supreme Court has held invalid an exercise of the taxing power of the state for establishing and maintaining an industry which was owned by the state or a municipality. Such is the character of all the laws here assailed. The industries are to be owned by the state and the cities. The latest expression of the Supreme Court on the subject is *Jones vs. City of Portland*, 245 U. S. 217, sustaining a statute of the state of Maine authorizing cities to establish and maintain wood, coal and fuel yards for the purpose of selling at cost wood, coal and fuel to their inhabitants. This decision is the more impressive because a similar law had been held invalid by the Supreme Court of Massachusetts and by some other state courts.

c. The leading authority in this country declaring a statute unconstitutional because it authorized taxation for private purposes is *Lowell vs. the City of Boston*. That case involved an issue of bonds to aid in the rebuilding of the portion of Boston that was destroyed in the great fire of November, 1872. The statute authorized the city to issue its bonds for twenty million dollars and out of the fund arising from their sale make loans to parties upon mortgages to aid in restoring the part of the city that had been destroyed. John A. Lowell and nine other taxable inhabitants brought suit to restrain the issuance of the bonds on the ground that the statute was unconstitutional. The Constitution of Massachusetts, like the Fourteenth Amendment of the Federal Constitution protects every individual "in the enjoyment of his life, liberty and property according to law." The statute was held to violate this provision. The court decides that however much the public welfare may be promoted by the use of the taxing power, if the direct benefits are to the individuals receiving the money and the public benefits are only indirect, the use of the taxing power is invalid. It is a striking illustration of the inconsistency of judicial reasoning that at this very time the courts all over the country were sustaining laws authorizing railroad aid bonds amounting to many millions which were given to the private owners of railroads, and the bonds were justified by the courts solely upon the ground that the public received an indirect benefit from the building of the railroads.

Returning now to *Lowell versus Boston*. It was decided in 1873 and has been a precedent for many decisions in Massachusetts and in other states condemning uses of the taxing power which were deemed to be for the public welfare. In 1917 the state held a constitutional convention. Its first action was to adopt an amendment sweeping away this decision. In a convention characterized by the conservatism of Massachusetts, the amendment was carried by a vote of 275 to 25 and was adopted by a popular vote of 261,138 to 52,437. This was the first time that the reasoning of *Lowell vs. Boston* was brought to the judgment bar of the people of the state. That decision had stood for more than half a century as an authority supporting scores of decisions nullifying laws to correct evils from which men, women and children were



suffering and furnishing reasons to even more congresses, legislatures and city councils why other laws should not be passed to correct such evils. And now that the real supreme tribunal of Massachusetts, the people of that commonwealth, has swept all these judicial precedents away in that state, what do we say has happened? This "The court was right all the time; but the people have now amended their constitution and granted the legislature power to do what the court said they couldn't do before and so the legislature may hereafter enact needed laws." But does that state the whole truth? I think not. It is not more true to say that the people of Massachusetts have corrected, if not rebuked, the judges of their Supreme judicial court. Have they not really said to their judges "You have been wrong all this half century. We never intended those general words in the Constitution to mean what you have been saying they mean and we wish you wouldn't use them any more to protect practices that have been proven to be economically, morally and legally unsound (*Ives vs. South Buffalo Railway Company* 201 N. Y. 271-287) and nullify laws passed for their correction." Is not that the real interpretation of what has happened, not only in Massachusetts, but in the adoption in nearly every state in the union during the last fifteen years, of constitutional amendments to correct decisions made under the general provisions which forbids a deprivation of life, liberty and property without due process of law.

111 *d.* No court has been so insistent and emphatic as the Supreme Court of the United States against the abuse of the power to declare laws unconstitutional under the general language of the Fourteenth Amendment.

1. It has restated the scope of the police power. Prior to 1885 that power was restricted by American courts to the public safety, health and morals. The Supreme Court holds that it embraces also laws intended to promote public prosperity and general welfare. *C. B. & Q. R'y Co. vs. Drainage Board*, 200 U. S. 561-592; *Chicago & Alton Railway Co. vs. Tranbargle*, 238 U. S. 67-77.

2. The courts may not concern themselves with the policy of legislation or its economic wisdom or folly. Those are considerations belonging exclusively to the legislature. *C. B. & Q. R'y Co. vs. McGuire*, 219 U. S. 549-569; *Price vs. Illinois*, 238 U. S. 446, 451-452; *Rast vs. Van Deman & Lewis*, 240 U. S. 342, 357; *Merrick vs. Halsey*, 242 U. S. 568, 586-588.

3. A law cannot be set aside "because the judiciary may be of the opinion that the act will fail of its purpose or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government."

*McLean vs. City of Arkansas*, 211 U. S. 538, 547-48; *Tanner vs. Little* 240 U. S. 369-385.

In the light of these established doctrines let us look at some of the general facts that condition this case.

The people of North Dakota are farmers, many of them pioneers. Their life has been intensely individual. They have never been

combined in corporate or other business organizations to train them in their common interests or promote their general welfare. In the main they have made their purchases and sold their products as individuals. Nearly all their livestock and grain is shipped to terminal markets at St. Paul, Minneapolis and Duluth.

There these products pass into the hands of large commission houses, elevator and milling companies and livestock concerns. These interests are combined not only in corporations, chambers of commerce, boards of trade and interlocking directorates but in the millions of understandings which arise among men having common interests and living through long terms of years in the daily intercourse of great cities. These common understandings need not be embodied in articles of incorporation or trust agreements. They may be as intangible as the ancient "powers of the air". But they are as potent in the economic world as those ancient powers were thought to be in the affairs of men. It is the potency of this unity of life of men dwelling together in daily intercourse that has caused all nations thus far to be governed by cities.

As North Dakota has become more thickly settled and the means of intercourse have increased the evils of the existing marketing system have been better understood. No single factor has contributed as much to that result as the scientific investigations of the state's Agricultural College and the federal experts connected with that institution. That work has been going on for a generation and has been carried to the homes of the state by extension workers, the press and the political discussion of repeated political campaigns. The people have thus come to believe that the evils of the existing system consist not merely in the grading of grain, its weighing, its dockage, the price paid and the disparity between the price of different grades and the flour producing capacity of the grain. They believe that the evil goes deeper; that the whole system of shipping the raw materials of North Dakota to these foreign terminals is wasteful and hostile to the best interests of the state. They say in substance:

1. The raw materials of the state ought to be manufactured into commercial products within the state. In no other way can its industrial life be sufficiently diversified to attain a healthy economic development.

2. The present system prevents diversified farming. The only way that can be built up is to grind the grain in the state which the state produces — keep the by-products of bran and shorts here and feed them to livestock upon the farms of the state. In no other way can a prosperous livestock, dairy and poultry industry be built up.

3. The existing marketing system tends directly to the exhaustion of soil fertility. In no way can soil depletion be prevented except to feed out to livestock at least as much of the by-products of the grain raised upon the state's farms as that grain produces when ground and thus put back into the soil in the form of enriched manures, the elements which the raising of small grains takes from it.

The present movement began at least as far back as 1911. In

that year an amendment of the State Constitution was initiated authorizing the state to acquire one or more terminal grain elevators and maintain and operate the same in such manner as the legislative assembly should prescribe. That amendment was adopted in 1913. From that time forward the discussion of the subject of marketing the products of the state has been the main theme of public thought. The movement has gone straight forward, the constitution has been repeatedly amended including the amendments here assailed—all having for their object the correction of the existing system of marketing the state's products. Year by year the conviction has deepened, in steadily increasing majorities, that public ownership of terminal elevators, mills and packing houses is the only effective remedy to correct the evils from which they believe themselves to be suffering.

114 Their decision is not a popular whim but a deliberate conviction arrived at as a result of full discussion and repeated presentations of the subject at the polls. The acts which the court is asked to restrain are not those of public officials, who are pursuing enterprises of their own devising. Those acts express not simply the judgment of the state legislature. To authorize their enactment the people of the state have re-drawn their Constitution. That is the highest and most deliberate act of a free people. These constitutional amendments authorize and direct the state to do what the defendants are threatening to do. Their acts are simply the carrying out of the mandate of those constitutional amendments.

It is hopeless to expect a population consisting of farmers scattered over a vast territory as the people of this state are to create any private business system that will change the system now existing. The only means through which the people of the state have had any experience in joint action is their state government. If they may not use that as the common agency through which to combine their capital and carry on such basic industries as elevators, mills and packing houses and so fit their products for market and market the same they must continue to deal as individuals with the vast combinations of these terminal cities and suffer the injustices that always exist where economic units so different in power have to deal the one with the other.

The foregoing is what a majority of the people of the state have been persuaded to believe by those whose leadership they trust. Whether their grievances are real or fancied, whether their remedies are wise or foolish, are subjects about which the court is not concerned. The only object in trying to set them forth has been to place the constitutional amendments and laws here assailed in their true relationship to the life and thought of the people by whom they were adopted.

115 The sole question then for the court is: Do these acts of the state constitute a violation of the Fourteenth Amendment of the Federal Constitution as that amendment has been construed by the Supreme Court? I think it is clear that they do not. Even if were in doubt it would be my duty to sustain the action of the state for it is only when legislation is plainly and palpably unconstitutional that a court is justified in nullifying it.

The motion of the defendants will, therefore, be granted and a decree entered dismissing the bill with costs.

Dated June 14th, 1919.

CHARLES F. AMIDON,

*Judge.*

16

*Decree.*

Entered June 14th, 1919.

(Title of Case.)

This cause having come on for hearing before the Court, upon the motion of the defendants to dismiss the bill, after hearing arguments of counsel, and due consideration, it is

Ordered, Adjudged and Decreed that said motion be granted and that the bill of complaint herein be and the same hereby is dismissed; and it is further

Ordered, Adjudged and Decreed that the defendants have and recover of the plaintiffs herein their costs and disbursements, taxed and allowed at the sum of \$20.00 and have execution therefor.

*Petition for Appeal.*

Filed July 14, 1919.

(Title of Case.)

To the Honorable Charles F. Amidon, Judge of the Above Named Court:

The above named plaintiffs and appellants, conceiving themselves aggrieved by the decree made and entered on the 14th day of June, 1919, in the above entitled cause, which decree dismisses the plaintiffs' bill, with costs, do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and they pray:

1. That this appeal may be allowed.
2. That the amount of security may be fixed by the order allowing the appeal.
3. And that a transcript of the record papers and proceedings upon which the decree was made, duly authenticated, may be sent to the United States Supreme Court.

Dated July 14th, 1919.

J. S. WATSON,  
N. C. YOUNG,  
E. T. CONMY,  
TRACY R. BANGS,  
PHILIP R. BANGS,  
C. J. MURPHY and  
T. A. TONER,

*Solicitors for Plaintiff.*

117

*Order Allowing Appeal.*

Filed July 14, 1919.

Upon reading the petition of the plaintiffs for appeal, and consideration of the assignment of errors presented therewith,  
It is ordered that the appeal, as prayed for, be, and the same hereby

is, allowed, and cost bond on appeal is hereby fixed at the sum of One Thousand Dollars (\$1,000.00).

For the purpose of removing any doubt as to the scope of the decree, the court adds that in passing upon the question whether the bill presents a case arising under the Federal Constitution, the Court passed and intended to pass on the merits. That seemed necessary. Otherwise if the court of review, should hold that this court erred in deciding that the amount in controversy does not exceed Three Thousand Dollars (\$3,000.00) the case might have to come back for a ruling here upon the other question, namely, whether the state action complained of in the bill deprives plaintiffs of any right secured to them by the Federal Constitution, with the right to a second appeal to review that ruling.

Notwithstanding the logical inconsistency of passing upon the merits, after deciding that the court was without jurisdiction this seemed better in the present case than to expose the parties to the hardship of two appeals to settle the basis legal questions raised by defendants' motion to dismiss, which had been fully argued at the bar and in elaborate written briefs, and submitted to the court for its decision.

Dated July 14th, 1919.

CHARLES F. AMIDON,  
Judge.

118

*Assignment of Errors.*

Filed July 14, 1919.

(Title of Case.)

Now on this 14th day of July, 1919, come the plaintiffs above named, (appellants herein) by Messrs. N. C. Young, J. S. Watson, E. T. Conmy, Tracy R. Bangs, Philip R. Bangs, C. J. Murphy and T. A. Toner, their solicitors, and in connection with their petition for appeal say, that the final decree in said cause is erroneous and against the just rights of said plaintiffs and appellants for the following reasons:

1.

The court erred in granting defendants' motion to dismiss the action.

2.

The court erred in holding that the amount in controversy in this action does not exceed the sum of Three Thousand Dollars.

3.

The court erred in holding that the constitutional provisions and statutes of North Dakota, set out in the bill, do not violate the Fourteenth Amendment of the Federal Constitution.

## 4.

The court erred in entering the decree dismissing this case.  
Wherefore the said plaintiffs pray that said decree be reversed.

J. S. WATSON,  
N. C. YOUNG,  
E. T. CONMY,  
TRACY R. BANGS,  
PHILIP R. BANGS,  
C. J. MURPHY,  
T. A. TONER,  
*Solicitors for Plaintiffs.*

*Bond.*

Filed July 14, 1919.

(Title of Case.)

Know All Men by These Presents: That we, John W. Scott, William J. Howe, O. B. Severson, L. A. Wood, Nels Nichols, George Lener, Emil Scow, W. C. Martin, Henry McLean, George P. Omnes, B. W. Hersey, T. W. Baker, George Christianson, R. H. Witt, E. J. Megeath, E. A. Anderson, S. B. Oakley, O. F. Bryant, George D. Elliott, John Satterlund, P. S. Chaffee, Alfred Thuring, S. Garnett, J. E. Baker, John R. Early, H. C. Johnson, John C. Each, Fred Stechner, Fred L. Roquette, Iver K. Bakken, Michael Day, J. L. Harvey, William Burnett, Nathan Upham, Orlando Brown, J. C. Hanchett, W. W. Wilde, Arlo Andrews, Duncan Brown, W. W. Cofell, E. B. Roscoe and C. H. Kinney, as principals, and the Northern Trust Company, a corporation, as surety, are held and firmly bound unto Lynn J. Frazier, Wm. Langer, John N. Hagan, Carl Kozitsky, Obert Olson and Thomas Hall in the full sum of one thousand dollars (\$1,000.00) to be paid to the said Lynn Frazier, Wm. Langer, John N. Hagan, Carl Kozitsky, Obert Olson and Thomas Hall, or their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 14th day of July, 1919.

And, Whereas, later, on June 14, 1919, at a term of the District Court of the United States for the District of North Dakota, in a suit pending in said court between the above named plaintiffs and defendants, a decree was rendered against the said plaintiffs dismissing their action and for twenty dollars (\$20.00) costs, and the said plaintiffs having obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit.

Now the condition of the above obligation is such that if the said plaintiffs shall prosecute their appeal to effect and will pay the amount of said decree and answer all damages and



costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and effect.

JOHN W. SCOTT,  
WILLIAM J. HOWE,  
O. B. SEVERSON,  
L. A. WOOD,  
NELS NICHOLS,  
GEORGE SIDENER,  
EMIL HOWE,  
W. C. MARTIN,  
HENRY McLEAN,  
GEORGE P. HOMNES,  
B. W. HERSEY,  
T. W. BAKER,  
GEORGE CHRISTENSON,  
R. H. LEVITT,  
E. J. MEGEATH,  
E. A. ANDERSON,  
S. B. OAKLEY,  
O. F. BRYANT,  
GEORGE D. ELLIOTT,  
JOHN SATTERLUND,  
P. S. CHAFFEE,  
ALFRED THURING,  
J. S. GARNETT,  
J. E. BAKER,  
JOHN R. EARLY,  
H. C. JOHNSON,  
JOHN C. LEACH,  
FRED STECKNER,  
FRED L. ROQUETTE,  
IVER K. BAKKEN,  
MICHAEL TOAY,  
J. L. HARVEY,  
WILLIAM BURNETT,  
NATHAN UPHAM,  
ORLANDO BROWN,  
J. O. HANCHETT,  
W. W. WILDE,  
ARLO ANDREWS,  
DUNCAN BROWNLEE,  
W. W. COFEL,  
E. B. ROSCOE,  
C. H. KINNEY,

By N. C. YOUNG,

*One of their Attorneys.*

NORTHERN TRUST COMPANY,

A CORPORATION,

By GEO. H. HOLLISTER, *Pres.*

(Corporate Seal.)

Sealed and Delivered in presence of A. A. Love, Jr., Catherine  
Ryan.

STATE OF NORTH DAKOTA,  
County of Cass, ss:

On this 14th day of July, A. D. 1919, before me, a Notary Public in and for said county and state, personally appeared Geo. H. Ellister, known to me to be the President of the corporation named and which executed the foregoing instrument and acknowledged to me that such corporation executed the same. I further certify that I have examined the By-laws of said corporation, and find such officer authorized thereby to execute bonds and undertakings on behalf of said corporation.

[SEAL.]

G. A. CLEMENS,  
Notary Public, Cass County, No. Dak.

My commission expires M'ch 4, 1922.

Approved:

CHARLES F. AMIDON,  
Judge.

*Notice of Filing Præcipe for Record.*

Filed August 11th, 1919.

(Title of Case.)

Wm. Langer, Wm. Lemke and F. A. Pike, Attorneys for Defendants:

Please take notice that on the 19th day of July, 1919, the undersigned filed with the Clerk of the above Court a Præcipe for the record to be transmitted to the Supreme Court of the United States on appeal taken in the above case, a copy of which præcipe is herewith served on you.

Dated this 19th day of July, 1919.

J. S. WATSON,  
N. C. YOUNG,  
E. T. CONMY,  
TRACY R. BANGS,  
PHILIP R. BANGS,  
C. J. MURPHY,  
T. A. TONER,  
Attorneys for Appellants.

Service of the within notice and copy of præcipe is hereby accepted this 20th day of July, 191—.

WM. LEMKE,  
F. A. PIKE,  
By WM. LEMKE,  
Attorneys for Defendants.

Personal service of the within Notice of filing præcipe is hereby admitted this 21st day of July, A. D. 1919, at Fargo, N. D.

WILLIAM LANGER,  
*Attorney for Defendants, Except  
Frazier and Hagen Personally*

122 The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above case, for use of the Supreme Court of the United States, by including therein the following:

1. The plaintiffs' Bill in full, including the title but omitting title in all subsequent papers.
2. The defendants' Answer.
3. The Motion to dismiss signed by Wm. Langer, Attorney General.
4. The Amended Motion to dismiss signed by Wm. Lemke.
5. The Stipulation for the Dismissal of the Board of University and School Lands and Order dismissing them.
6. The Court's opinion.
7. The Decree.
8. Plaintiffs' Assignments of Error.
10. Appeal Bond and approval thereof.

Dated this 19th day of July, 1919.

J. S. WATSON,  
N. C. YOUNG,  
E. T. CONMY,  
TRACY R. BANGS,  
PHILIP R. BANGS,  
C. J. MURPHY,  
T. A. TONER,  
*Attorneys for Appellants*

*Citation.*

## UNITED STATES OF AMERICA:

To LYNN J. Frazier, William Langer, and John N. Hagen, acting and pretending to act as the Industrial Commission of North Dakota, LYNN J. Frazier, Carl Kozitsky, William Langer, Obert Olson, and Thomas Hall, acting as the State Auditing Board; Obert Olson, as State Treasurer of the State of North Dakota; Carl Kozitsky as State Auditor of the State of North Dakota, and LYNN J. Frazier as Governor of said State, William Langer, as Attorney General of said State, John N. Hagen, as Commissioner of Agriculture and Labor of said State, Thomas Hall, as Secretary of State of said State, and Minnie J. Nielson, as Superintendent of Public Instruction of said State and LYNN J. Frazier, William Langer, Thomas Hall, Carl Kozitsky, Obert Olson, John N. Hagen, and Minnie J. Nielson, individually, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the City of Washington, District of Columbia, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's Office of the United States District Court for the District of North Dakota, wherein John W. Scott, William J. Howe, O. B. Severson, L. A. Wood, Nels Nichols, George Sidener, Emil Scow, W. C. Martin, Henry McLean, George P. Hommes, B. W. Hersey, T. W. Baker, George Christenson, R. H. Levitt, E. J. Megeath, E. A. Anderson, S. B. Oakley, O. F. Bryant, George D. Elliott, John Satterlund, P. S. Chaffee, Alfred Thuring, J. S. Garnett, J. E. Baker, John R. Early, H. C. Johnson, John C. Leach, Fred Stockner, Fred L. Roquette, Iver K. Bakken, Michael Toay, J. L. Harvey, William Burnett, Nathan Upham, Orlando Brown, J. O. Hanchett, W. W. Wilde, Arlo Andrews, Duncan Brownlee, W. W. Cofell, E. B. Roscoe, C. H. Kinney, on behalf of themselves, and all other taxpayers of the state of North Dakota are appellants and you are appellees, to show cause, if any there be, why the Decree rendered against the said appellants as in said Appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Charles F. Amidon, Judge of the United States District Court for the District of North Dakota, this 14th day of July, A. D. 1919.

CHARLES F. AMIDON. *Judge.*

Personal service of the above citation is hereby admitted, by copy thereof, this 17th day of July, A. D. 1919.

WILLIAM LANGER,

*Attorney General.*

WM. LEMKE,  
F. A. PIKE.

*Solicitors for Appellees.*

124 UNITED STATES OF AMERICA,  
*District of North Dakota, ss:*

I, J. A. Montgomery, Clerk of the District Court of the United States for the District of North Dakota, do hereby certify that the foregoing pages, from 1 to 123, contain true and faithful transcripts of all pleadings, process and proceedings of record and on file in my office as said clerk, designated by the appellant and appellee, at the whole thereof, in the case of "John W. Scott et al, complainant versus Lynn J. Frazier et al, Defendants."

Witness my hand and the seal of said Court, at Fargo, this 11 day of August, A. D. 1919.

J. A. MONTGOMERY,  
*Clerk.*

By E. R. STEELE,  
*Deputy.*

File No. 27,263. North Dakota, D. C. U. S. Term No. 508. John W. Scott, William J. Howe, O. B. Severson et al., Appellants, Lynn J. Frazier et al. Filed August 22d, 1919. File No. 27,263.

FILED

DEC 15 1919

**Supreme Court of the United States**  
IN EQUITY, No. 508.  
OCTOBER TERM, 1919.

ES D. MAHER;  
CLERK.

JOHN W. SCOTT, WILLIAM J. HOWE, O. B. SEVERSON, L. A. WOOD, NELS NICHOLS, GEORGE SIDELER, EMIL SCOW, W. C. MARTIN, HENRY MCLEAN, GEORGE P. HOMNES, B. W. HERSEY, T. W. BAKER, GEORGE CHRISTENSON, R. H. LEVITT, E. J. MCGEATH, E. A. ANDERSON, T. B. OAKLEY, O. F. BRYANT, GEORGE D. ELLIOTT, JOHN SATTERLUND, P. S. CHAFFEE, ALFRED THURING, J. S. GARNETT, J. E. BAKER, JOHN R. EARLY, B. C. JOHNSON, JOHN C. LEACH, FRED STECKNER, FRED L. ROQUETTE, IVER K. BAKKEN, MICHAEL TOAY, J. L. HARVEY, WILLIAM BURNETT, NATHAN UPHAM, ORLANDO BROWN, J. O. HANCHETT, W. W. WILDE, ARLO ANDREWS, DUNCAN BROWNLEE, W. W. COFFEL, E. B. ROSCOE, C. H. KINNEY, ON BEHALF OF THEMSELVES, AND ALL OTHER TAXPAYERS OF THE STATE OF NORTH DAKOTA,  
*Plaintiffs in Error,*

*vs.*

LYNN J. FRAZIER, WILLIAM LANGER AND JOHN N. HAGAN, ACTING AND PRETENDING TO ACT AS THE INDUSTRIAL COMMISSION OF NORTH DAKOTA; LYNN J. FRAZIER, CARL KOZITSKY, WILLIAM LANGER, OBERT OLSON, AND THOMAS HALL, ACTING AS THE STATE AUDITING BOARD, LYNN J. FRAZIER, WILLIAM LANGER, THOMAS HALL, CARL KOZITSKY AND MINNIE J. NIELSON, CONSTITUTING AND ACTING AS THE BOARD OF UNIVERSITY AND SCHOOL LANDS; OBERT OLSON AS STATE TREASURER OF THE STATE OF NORTH DAKOTA; CARL KOZITSKY AS STATE AUDITOR OF THE STATE OF NORTH DAKOTA; AND LYNN J. FRAZIER, AS GOVERNOR OF SAID STATE; WILLIAM LANGER AS ATTY. GEN. OF SAID STATE, JOHN N. HAGAN, AS COMMISSIONER OF AGRICULTURE AND LABOR OF SAID STATE, THOMAS HALL AS SECRETARY OF STATE OF SAID STATE; AND MINNIE J. NIELSON AS SUPERINTENDENT OF PUBLIC INSTRUCTION OF SAID STATE; AND LYNN J. FRAZIER, WILLIAM LANGER, THOMAS HALL, CARL KOZITSKY, OBERT OLSON, JOHN N. HAGAN, AND MINNIE J. NIELSON, INDIVIDUALLY,  
*Defendants in Error.*

WILLIAM LEMKE,

*Fargo, North Dakota,*

FREDERIC A. PIKE,

*St. Paul, Minnesota,*

*Counsel for Lynn J. Frazier,  
one of the defendants in error*

*above named.*





# Supreme Court of the United States.

IN EQUITY, No. 508.

OCTOBER TERM, 1919.

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JOHN W. SCOTT, WILLIAM J. HOWE, O. B. SEVERSON, L. A. WOOD, NELS NICHOLS, GEORGE SIDELER, EMIL SCOW, W. C. MARTIN, HENRY MCLEAN, GEORGE P. HOMNES, B. W. HERSEY, T. W. BAKER, GEORGE CHRISTENSON, R. H. LEVITT, E. J. MCGEATH, E. A. ANDERSON, T. B. OAKLEY, O. F. BRYANT, GEORGE D. ELLIOTT, JOHN SATTERLUND, P. S. CHAFFEE, ALFRED THURING, J. S. GARNETT, J. E. BAKER, JOHN R. EARLY, B. C. JOHNSON, JOHN C. LEACH, FRED STECKNER, FRED L. ROQUETTE, IVER K. BAKKEN, MICHAEL TOAY, J. L. HARVEY, WILLIAM BURNETT, NATHAN UPHAM, ORLANDO BROWN, J. O. HANCHETT, W. W. WILDE, ARLO ANDREWS, DUNCAN BROWNEE, W. W. COFFEL, E. B. ROSCOE, C. H. KINNEY, ON BEHALF OF THEMSELVES, AND ALL OTHER TAXPAYERS OF THE STATE OF NORTH DAKOTA,

*Plaintiffs in Error,*

*vs.*

LYNN J. FRAZIER, WILLIAM LANGER AND JOHN N. HAGAN, ACTING AND PRETENDING TO ACT AS THE INDUSTRIAL COMMISSION OF NORTH DAKOTA; LYNN J. FRAZIER, CARL KOZITSKY, WILLIAM LANGER, OBERT OLSON, AND THOMAS HALL, ACTING AS THE STATE AUDITING BOARD, LYNN J. FRAZIER, WILLIAM LANGER, THOMAS HALL, CARL KOZITSKY AND MINNIE J. NIELSON, CONSTITUTING AND ACTING AS THE BOARD OF UNIVERSITY AND SCHOOL LANDS; OBERT OLSON AS STATE TREASURER OF THE STATE OF NORTH DAKOTA; CARL KOZITSKY AS STATE AUDITOR OF THE STATE OF NORTH DAKOTA; AND LYNN J. FRAZIER, AS GOVERNOR OF SAID STATE; WILLIAM LANGER AS ATTY. GEN. OF SAID STATE, JOHN N. HAGAN, AS COMMISSIONER OF AGRICULTURE AND LABOR OF SAID STATE, THOMAS HALL AS SECRETARY OF STATE OF SAID STATE; AND MINNIE J. NIELSON AS SUPERINTENDENT OF PUBLIC INSTRUCTION OF SAID STATE; AND LYNN J. FRAZIER, WILLIAM LANGER, THOMAS HALL, CARL KOZITSKY, OBERT OLSON, JOHN N. HAGAN, AND MINNIE J. NIELSON, INDIVIDUALLY,

*Defendants in Error.*

## MOTION FOR ADVANCEMENT OF HEARING.

Now comes Lynn J. Frazier, as Governor of the State of North Dakota, one of the defendants in error above named, by his counsel William Lemke and Frederic A. Pike, and moves that the hearing of said cause in the Supreme Court of the United States be advanced upon the calendar to such earlier date as the Court may deem proper.

This motion is made upon the subjoined affidavit of Lynn J. Frazier, to which reference is made for a statement of the matter involved, with the reasons for this application.

December 11, 1919.

Respectfully submitted,

WILLIAM LEMKE,

FREDERIC A. PIKE,

*Counsel for Lynn J. Frazier,  
one of the defendants in error  
above named.*

## AFFIDAVIT OF LYNN J. FRAZIER.

STATE OF NORTH DAKOTA, }  
COUNTY OF BURLEIGH. } ss.

Lynn J. Frazier being duly sworn on his oath says that he is the Governor of the State of North Dakota, and Chairman of the Industrial Commission of North Dakota; and that as such he is one of the defendants in the above entitled cause.

This affiant further says that said action involves the validity of certain laws of the State of North Dakota, enacted by the Legislative Assembly of said State and approved February 25, 1919, said laws being respectively entitled as follows:

1: House Bill No. 17 entitled, "An Act Creating the Industrial Commission of North Dakota, authorizing it to

"conduct and manage on behalf of the State certain utilities, industries, enterprises and business projects and defining its powers and duties; and making an appropriation therefor," being Chapter 151, Laws of North Dakota for 1919.

2: House Bill No. 18 entitled, "An Act Declaring the purpose of the State of North Dakota to engage in the banking business and establish a system of banking under the name of the Bank of North Dakota, operated by the State, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; making an appropriation therefor; and providing penalties for the violations of certain provisions thereof," being Chapter 147, Laws of North Dakota for 1919.

3: House Bill No. 49 entitled, "An Act providing for the issuing of bonds of the State of North Dakota in the sum of Two Million Dollars, to be known as 'Bonds of North Dakota, Bank Series'; prescribing the terms and stating the purposes thereof; providing a tax and making other provisions for the payment thereof; making appropriations for the payment of said bonds and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure', being Chapter 148, Laws of North Dakota for 1919.

4: Senate Bill No. 130 entitled, "An Act providing for the issuing of bonds of the State of North Dakota in a sum not exceeding Ten Million Dollars, to be known as 'Bonds of North Dakota, Real Estate Series'; prescribing the terms and stating the purposes thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal on said bonds, and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure," being Chapter 154,

Laws of North Dakota for 1919.

5: Senate Bill No. 20 entitled, "An Act Declaring the purpose of the State of North Dakota to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator and flour mill system under the name of North Dakota Mill and Elevator Association operated by the state, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor," being Chapter 153, Laws of North Dakota for 1919.

6: Senate Bill No. 75 entitled, "An Act Providing for the issuing of bonds of the State of North Dakota in a sum not exceeding Five Million Dollars to be known as 'Bonds of North Dakota, Mill and Elevator Series'; prescribing the terms and stating the purposes thereof; providing for tax and making other provisions for the payment thereof of making appropriations and other provisions for the payment of interest and principal of said bonds and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure," being Chapter 154, Laws of North Dakota for 1919.

7: Senate Bill No. 19 entitled, "An Act Declaring the purpose of the State of North Dakota to engage in the enterprise of providing homes for residents of this state and to that end to establish a business system operated by the state under the name of The Home Building Association of North Dakota, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; and making appropriation therefor", being Chapter 150, Laws of North Dakota for 1919.

Each of said laws is recited in full in the bill of complaint herein.

This affiant further says that on the 5th day of December 1919, the Legislative Assembly of North Dakota adopted a joint resolution as follows:

"WHEREAS, An action in equity in the District Court of the United States for the District of North Dakota has been begun under the title of John W. Scott, et al., against Lynn J. Frazier, et al., the purpose of which is to enjoin and prevent the operation of the laws enacted at the last session of this Legislative Assembly creating the Industrial Commission of North Dakota, the Bank of North Dakota, the Milling and Elevator Association and the Home Building Association, and providing for issuance of state bonds wherewith to finance those state enterprises; and whereas said action, after a hearing before the Hon. Charles F. Amidon, United States District Judge, was determined in favor of the defendants and against the plaintiffs, thereby holding the said laws to be valid and constitutional; and whereas the plaintiffs in said cause have appealed from the decision of the District Court of the United States to the Supreme Court of the United States and the appeal is now pending; and whereas this Legislative Assembly is advised that, in the usual course of business of the Supreme Court of the United States, in view of the large number of causes now waiting to be heard before that tribunal, the said case of *Scott, et al, against Frazier, et al.*, will not be heard in the Supreme Court for a period of about one year from this time or longer; and

"WHEREAS, the issues involved in said cause are of great public importance to the State of North Dakota and all its people, and involve matters of greatest moment in carrying forward the public policies of this State;

"NOW, THEREFORE, BE IT RESOLVED by the Legislative Assembly of the State of North Dakota: That it is desired by the State of North Dakota that the issues arising in said cause be heard and advanced to final judgment as soon as may be practicable; and that the Governor of this state, who is a party to said cause, as Governor and as Chairman of the Industrial Commission of North Dakota, be and he is hereby authorized, empowered and



"directed to take all proper and necessary measures for the advancement of the hearing of said cause before the Supreme Court of the United States."

This affiant further says that this affidavit is made for the purpose of making application to the Supreme Court of the United States for an order advancing the hearing of said cause to an early date. To that end affiant submits the following recital of facts:

Upon the enactment and approval of the laws above designated, this affiant, together with other officials and individuals charged with the enforcement of said laws and with the performance of the duties thereby imposed, proceeded to execute said laws according to their terms. Thereafter the plaintiffs began this action.

The laws in question contemplate and provide for the inauguration and carrying on of certain public enterprises by and on behalf of the State of North Dakota. The successful prosecution of these enterprises requires funds in large amounts, and provision is made in the laws for obtaining such funds, through the issuance, negotiation and sale of bonds of the State. The availability of such bonds depends upon their marketability,—the readiness with which they may be sold to the public; and this in turn, of course, depends upon the validity of the bonds as obligations of the State. The validity of the bonds is attacked in this action; and although the laws authorizing the bonds have been adjudged valid by the Supreme Court of North Dakota and by the District Court of the United States for the district of North Dakota, nevertheless the pendency of this action upon appeal to the Supreme Court of the United States keeps open the question of their validity and makes the negotiation and sale of the bonds practically impossible until the determination of the appeal. The Industrial Commission of North Dakota has heretofore made with certain financial agents a contract for the sale of these bonds conditioned upon favorable opinion of legal counsel as to their validity; and recently,

as affiant is informed and believes, the opinion of such counsel has been rendered to prospective buyers to the effect that until decision of the pending appeal, the question of the validity of the bonds must be considered as undetermined; and so the sale has been prevented. Thus the funds intended and expected to be obtained by the State of North Dakota from the sale of bonds have not been forthcoming and cannot be obtained or become available for the purposes intended by law until this appeal shall have been determined by the Supreme Court of the United States.

The policies of the State of North Dakota declared and defined by these laws are of great public importance. The people of this State are engaged largely in agriculture and in allied industries. For many years they have considered and taken counsel together concerning the most useful and effective methods of promoting their industries by increasing the agricultural product of the State and by improving the methods of manufacturing and marketing such products. The laws here assailed are the result of the matured thought and determination of the people, and it is of the highest public importance that the policies so determined and declared by the State should be developed and fully executed.

The policies of the State declared by these laws include the establishment and maintenance by the State of a system of banking under the name of the Bank of North Dakota. The purpose of this system is to promote agriculture, commerce and industry. One of the means employed, as already inaugurated in the operation of the Bank, is a system of loans made by the Bank secured by real property situated within this State. The terms upon which such loans are made, as to rates of interest, periods of payment and other details, are such that, while the financial interests of the State as mortgagee are fully safeguarded, the obligations resting upon borrowers are made less burdensome than heretofore, so that encouragement is given to the development of agriculture and grazing, in which eighty-per cent of the population of the State are engaged, as well

as to the other industries dependent upon possession of land for maintenance. In a general way it may be said that this department of the activities of the State, as formulated in the operations of the Bank of North Dakota, is analogous to the system of farm loans in operation through the Federal Land Banks of the United States, with such variations as experience and the special needs of the people of the State have shown to be desirable.

In order to provide specific funds sufficient for the administration of the loan department of the Bank of North Dakota, the legislature authorized the issuance of State bonds, the aggregate amount of which shall not at any time exceed ten millions of dollars, these bonds to be based upon the real estate mortgages from time to time taken by the Bank, thus avoiding the tying up of any great amount of the public moneys in the loan operations so directed. It is apparent, then, that the negotiation of these bonds, the selling of them to investors, is essential to the benign purposes contemplated by the policy of the State. It is apparent also that any obstruction placed in the way of the negotiation and sale of these bonds is an obstruction to the policy of the State and tends importantly to defeat the intended good. Whatever, therefore, may be the purpose of the pending litigation, since it serves as an obstruction to the negotiation and sale of the bonds in question, it is so far forth an obstruction to the policy of the State and prevents the benefits that will follow the unhampered operation of that policy. This situation exhibits in one aspect the need for early determination of this litigation.

While the Bank is in full operation in other respects, and has employed some of the funds in its possession as deposits for making loans of the character described, and while there is no temporary restraining order in operation to limit the activities of the Bank in any of its functions, yet the pendency of this litigation, through the prevention of the use of bonds as means of securing funds, operates substantially as an effective restraint upon the Bank in this regard.

As has been stated, the Bank is in full operation in its various functions and has already rendered important benefits to the State in mobilizing the assets of the State and its entire financial worth, co-operating with all the banks and other financial agencies in the state, thereby enlarging the opportunity for the development of all the material interests of its people. A great institution is being established for handling the annual crops of the State without the inconvenience and loss incidental to reliance upon financial institutions outside the boundaries of the State, to which recourse has hitherto been customary, thus placing the great producing agricultural community of North Dakota upon a financial footing independent of the control of the money centers beyond its borders. But while this work has been well commenced, its development and successful application to the needs of the coming year, beginning with credits required in the purchase of seed grains for spring planting, will depend largely upon obtaining funds through the sale of bonds other than those mentioned above, which have also been authorized by the Legislature of the State in the aggregate sum of two millions of dollars for the purpose of supplying the Bank with a so-called capital fund available for the general purpose of its creation. These intended benefits also are obstructed and will be in large degree prevented by the continued pendency of this litigation.

In like manner the policy of the State is obstructed by its inability to sell still other bonds of the State intended to promote the development of certain elevator and milling enterprises projected by the State through this legislation. It is notorious that the grain growing interest of North Dakota has been handicapped, and both the grain producer and the consumer have been subjected to great and unnecessary charges and losses through the privately controlled system of elevators and mills which have taken toll in the process of distribution and manufacture of grain products.

The development of the policies of the State that are involved in the laws attacked in this litigation, and the relation

of those policies to the welfare of the State have been ably set forth in the opinion written by Judge Amidon in this case. (*Scott v. Frazier*, 258 Fed. Rep. 669.) Judge Amidon says, among other things:

"The people of North Dakota are farmers, many of them pioneers. Their life has been intensely individual. They have never been combined in corporate or other business organizations, to train them in their common interests or promote their general welfare. In the main they have made their purchases and sold their products as individuals. Nearly all their live stock and grain is shipped to terminal markets at St. Paul, Minneapolis and Duluth. There these products pass into the hands of large commission houses, elevator and milling companies, and live stock concerns. These interests are combined, not only in corporations, chambers of commerce, boards of trade, and interlocking directorates, but in the millions of understandings which arise among men having common interests and living through long terms of years in the daily intercourse of great cities. These common understandings need not be embodied in articles of incorporation or trust agreements. They may be as intangible as the ancient 'powers of the air.' But they are as potent in the economic world as those ancient powers were thought to be in the affairs of men. It is the potency of this unity of life of men dwelling together in daily intercourse that has caused all nations thus far to be governed by cities.

"As North Dakota has become more thickly settled and the means of intercourse have increased, the evils of the existing marketing system have been better understood. No single factor has contributed as much to that result as the scientific investigation of the state's Agricultural College and the federal experts connected with that institution. That work has been going on for a generation, and has been carried to the homes of the state by extension workers, the press, and the political discussion of repeated

"political campaigns. The people have thus come to believe that the evils of the existing system consist, not merely in the grading of grain, its weighing, its dockage, the price paid and the disparity between the price of different grades and the flour-producing capacity of the grain. They believe that the evil goes deeper; that the whole system of shipping the raw materials of North Dakota to these foreign terminals is wasteful and hostile to the best interests of the state. They say in substance:

"(1) The raw materials of the state ought to be manufactured into commercial products within the state. In no other way can its industrial life be sufficiently diversified to attain a healthy economic development.

"(2) The present system prevents diversified farming. The only way that can be built up is to grind the grain in the state which the state produces—keep the by-products of bran and shorts here, and feed them to live stock upon the farms of the state. In no other way can a prosperous live stock, dairy, and poultry industry be built up.

"(3) The existing marketing system tends directly to the exhaustion of soil fertility. In no way can soil depletion be prevented, except to feed out to live stock at least as much of the by-products of the grain raised upon the state's farms as that grain produces when ground, and thus put back into the soil, in the form of enriched manures, the elements which the raising of small grains takes from it.

"The present movement began at least as far back as 1911. In that year an amendment of the state Constitution was initiated, authorizing the state to acquire one or more terminal grain elevators and maintain and operate the same in such manner as the legislative assembly should prescribe. That amendment was adopted in 1913. From that time forward the discussion of the subject of marketing the products of the state has been the main theme of public thought. The movement has gone straight for-



"ward. The Constitution has been repeatedly amended,  
 "including the amendments here assailed—all having for  
 "their object the correction of the existing system of mar-  
 "keting the state's products. Year by year the conviction  
 "has deepened, in steadily increasing majorities, that pub-  
 "lic ownership of terminal elevators, mills, and packing  
 "houses is the only effective remedy to correct the evils  
 "from which they believe themselves to be suffering. Their  
 "decision is not a popular whim, but a deliberate convic-  
 "tion, arrived at as a result of full discussion and repeat-  
 "ed presentations of the subject at the polls. The acts  
 "which the court is asked to restrain are not those of pub-  
 "lic officials, who are pursuing enterprises of their own  
 devising. Those acts express not simply the judgment of  
 "the State Legislature. To authorize their enactment the  
 "people of the state have redrawn their Constitution. That  
 "is the highest and most deliberate act of a free people.  
 "These constitutional amendments authorize and direct  
 "the state to do what the defendants are threatening to do.  
 Their acts are simply the carrying out of the mandate of  
 "those constitutional amendments.

"It is hopeless to expect a population consisting of farm-  
 "ers scattered over a vast territory as the people of this  
 "state are to create any private business system that will  
 "change the system now existing. The only means through  
 "which the people of the state have had any experience in  
 "joint action is their state government."

It is obvious that the outcome of this litigation is of supreme  
 importance to this State. If the result is to disclose that the  
 State has embarked upon enterprises repugnant to the consti-  
 tution of the United States, it is desirable to know it as soon as  
 practicable, in order that the State may revise its laws and re-  
 model its enterprises in accordance with such determination.  
 If on the other hand the decision reached by the District Court  
 is to stand affirmed, it is greatly to be desired that such affirma-

tion may be soon determined, to the end that the policies of the State shall be developed without hindrance and the people enjoy the intended benefits without delay.

LYNN J. FRAZIER.

Subscribed and sworn to before me this 11th day of December, 1919.

JOSEPH COGHLAN,

Notary Public,

Burleigh County, North Dakota.

My commission expires September 20, 1923.



JAN 9 1920

JAMES D. MAHER,  
CLERK.

# SUPREME COURT OF THE UNITED STATES

IN EQUITY, No. 508.

OCTOBER TERM, 1919.

John W. Scott, William J. Howe, O. B. Severson, L. A. Wood, Nels Nichols, George Sideler, Emil Scow, W. C. Martin, Henry McLean, George P. Homnes, B. W. Hersey, T. W. Baker, George Christenson, R. H. Levitt, E. J. McGeath, E. A. Anderson, T. B. Oakley, O. F. Bryant, George D. Elliott, John Satterlund, P. S. Chaffee, Alfred Thuring, J. S. Garnett, J. E. Baker, John R. Early, B. C. Johnson, John C. Leach, Fred Steckner, Fred L. Roquette, Iver K. Bakken, Michael Toay, J. L. Harvey, William Burnett, Nathan Upham, Orlando Brown, J. O. Hanchett, W. W. Wilde, Arlo Andrews, Duncan Brownlee, W. W. Coffel, E. B. Roscoe, C. H. Kinney, on behalf of themselves, and all other taxpayers of the State of North Dakota.

*Plaintiffs in Error.*

VS.

Lynn J. Frazier, William Langer, and John N. Hagan, acting and pretending to act as the Industrial Commission of North Dakota; Lynn J. Frazier, Carl Kozitsky, William Langer, Obert Olson and Thomas Hall, acting as the State Auditing Board; Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky, and Minnie J. Nielson, constituting and acting as the Board of University and School Lands; Obert Olson as State Treasurer of the State of North Dakota; Carl Kozitsky, as State Auditor of State of North Dakota; and Lynn J. Frazier, as Governor of said State; William Langer as Attorney General of said State, John N. Hagan, as Commissioner of Agriculture and Labor of said State; Thomas Hall as Secretary of State of said State; and Minnie J. Nielson as Superintendent of Public Instruction of said State; and Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky, Obert Olson, John N. Hagan, and Minnie J. Nielson, individually.

*Defendants in Error.*

## Response by Plaintiffs In Error To Notice of Motion For Advancement

N. C. YOUNG,

E. T. CONMY,

Fargo, North Dakota.

TRACY R. BANGS,

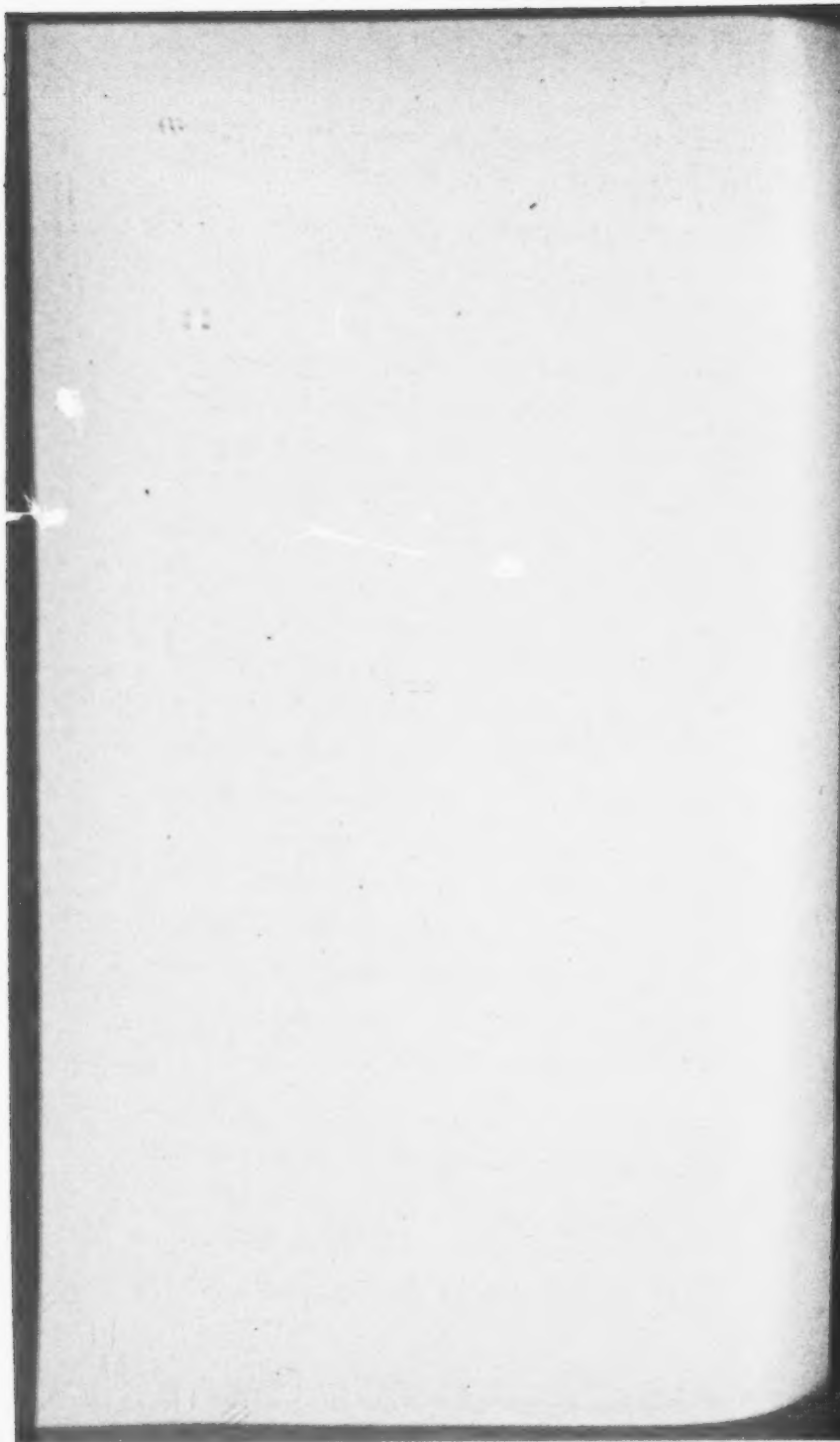
PHILIP R. BANGS,

CHARLES J. MURPHY,

T. A. TONER,

Grand Forks, North Dakota.

*Counsel for Plaintiffs in Error.*



# SUPREME COURT OF THE UNITED STATES

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IN EQUITY, No. 508.

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John W. Scott, William J. Howe, O. B. Severson,  
L. A. Wood, Nels Nichols, George Sideler, Emil  
Scow, W. C. Martin, Henry McLean, George P.  
Hommes, B. W. Hersey, T. W. Baker, George  
Christenson, R. H. Levitt, E. J. McGeath, E. A.  
Anderson, T. B. Oakley, O. F. Bryant, George D.  
Elliott, John Satterlund, P. S. Chaffee, Alfred  
Thuring, J. S. Garnett, J. E. Baker, John R.  
Early, B. C. Johnson, John C. Leach, Fred Steck-  
ner, Fred L. Roquette, Iver K. Bakken, Michael  
Toay, J. L. Harvey, William Burnett, Nathan  
Upham, Orlando Brown, J. O. Hanchett, W. W.  
Wilde, Arlo Andrews, Duncan Brownlee, W. W.  
Coffel, E. B. Roscoe, C. H. Kinney, on behalf of  
themselves, and all other taxpayers of the State  
of North Dakota.

*Plaintiffs in Error.*

vs.

Lynn J. Frazier, William Langer, and John N. Hagan,  
acting and pretending to act as the Industrial  
Commission of North Dakota; Lynn J. Frazier,  
Carl Kozitsky, William Langer, Obert Olson and  
Thomas Hall, acting as the State Auditing



Board, Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky, and Minnie J. Nielson, constituting and acting as the Board of University and School Lands; Obert Olson as State Treasurer of the State of North Dakota; Carl Kozitsky as State Auditor of the State of North Dakota; and Lynn J. Frazier, as Governor of said State; William Langer as Attorney General of said State, John N. Hagan, as Commissioner of Agriculture and Labor of said State; Thomas Hall as Secretary of State of said State; and Minnie J. Nielson as Superintendent of Public Instruction of said State; and Lynn J. Frazier, William Langer, Thomas Hall, Carl Kozitsky, Obert Olson, John N. Hagan, and Minnie J. Nielson, individually,

*Defendants in Error.*

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RESPONSE BY PLAINTIFFS IN ERROR TO  
NOTICE OF MOTION FOR ADVANCEMENT

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Come now the Plaintiffs in Error in the above entitled cause and responding, through their counsel, to the Motion for Advancement of said cause upon the calendar of the Supreme Court of the United States, respectfully state and show to the Court:

1. That the record in said case has not yet been printed.

2. That there are six defendants in error, three of whom, viz: Lynn J. Frazier, William Langer and John N. Hagan, constitute under the provisions of House Bill No. 17 set out in the Bill of Complaint, "The Industrial Commission of the State of North Dakota."

3. That the said William Langer is the Attorney General of the State of North Dakota, and as such is charged by the laws of the State with the defense of any officer of the State acting in an official capacity, and is by Section 3 of said House Bill No. 17 made the attorney for said Industrial Commission and as plaintiffs in error understand is in control of the defense of this case.

4. That this motion for advancement is made by one of said defendants in error and by private counsel who in the court below represented only the said Lynn J. Frazier and John N. Hagan, and the Plaintiffs in Error are not advised of the position of said Langer or of the Defendants in Error represented by him.

5. That the State of North Dakota is not a party to said action.

6. Plaintiffs in Error cannot consent or agree

to many matters set forth in the affidavit of Lynn J. Frazier upon which the motion to advance is based as to the necessity for the speedy operation of the laws referred to in said motion or of the claimed benefit to be derived by the people of the State of North Dakota through the operation of said Industrial system. On the contrary, assert the fact to be that the State of North Dakota is well supplied with all of the utilities provided for in the laws involved in this case as is fully set out and made to appear in the Bill of Complaint, which for the purposes of these proceedings is taken as true in all respects and which Bill of Complaint is filed herewith and to which reference is prayed.

7. That plaintiffs in error agree that the above entitled case is important and that the questions involved are of vital interest especially to the taxpayers of North Dakota. They admit that the right to put into operation laws authorizing the State to enter into general business enterprises, such as are provided for in the pretended constitutional amendments and laws set out in the complaint in this action, and in connection with such business to incur indebtedness and obligate the State without limit, should be settled with " convenient dispatch, and Plaintiffs in Error have no objection to the advancement of the cause should

the Court be of the opinion that the case is a proper one for advancement. However, in the event of the advancement of argument, counsel for Plaintiffs in Error ask that a reasonable time, considering the magnitude of the interests and questions involved, after the record has been printed, be allowed within which to prepare written briefs and argument for submission to the Court. Counsel for Plaintiffs in Error are of opinion that argument should not be advanced to a date earlier than May 1st, 1920.

N. C. YOUNG,

E. T. CONMY,

of Fargo, N. D.,

TRACY R. BANGS,

PHILIP R. BANGS,

CHARLES J. MURPHY,

T. A. TONER,

of Grand Forks, N. D.,

*Solicitors for Plaintiffs in Error.*



\* IN THE UNITED STATES DISTRICT COURT,  
FOR THE DISTRICT OF NORTH DAKOTA,  
SOUTHEASTERN DIVISION.  
IN EQUITY.

JOHN W. SCOTT, WILLIAM J. HOWE, O. B. SEVERSON,  
L. A. WOOD, NELS NICHOLS, GEORGE SIDENER,  
EMIL SCOW, W. C. MARTIN, HENRY MCLEAN,  
GEORGE P. HOMNES, B. W. HERSEY, T. W. BAKER,  
GEORGE CHRISTENSON, R. H. LEVITT, E. J.  
MEGEATH, E. A. ANDERSON, S. B. OAKLEY, O. F.  
BRYANT, GEORGE D. ELLIOTT, JOHN SATTERLUND,  
P. S. CHAFFEE, ALFRED THURING, J. S. GARNETT, 2  
J. E. BAKER, JOHN R. EARLY, H. C. JOHNSON,  
JOHN C. LEACH, FRED STECKNER, FRED L.  
ROQUETTE, IVER K. BAKKEN, MICHAEL TOAY, J. L.  
HARVEY, WILLIAM BURNETT, NATHAN UPHAM,  
ORLANDO BROWN, J. O. HANCHETT, W. W. WILDE,  
ARLO ANDREWS, DUNCAN BROWNLEE, W. W.  
COFELL, E. B. ROSCOE, C. H. KINNEY, on behalf  
of themselves, and all other taxpayers of the State  
of North Dakota. *Plaintiffs.*

vs.

LYNN J. FRAZIER, WILLIAM LANGER and JOHN N.  
HAGAN, acting and pretending to act as the Industrial  
Commission of North Dakota; LYNN J. FRAZIER,  
CARL KOZITSKY, WILLIAM LANGER, OBERT OLSON,  
and THOMAS HALL, acting as the State Auditing  
Board; LYNN J. FRAZIER, WILLIAM LANGER,  
THOMAS HALL, CARL KOZITSKY and MINNIE J.  
NIELSON, constituting and acting as the Board of  
University and School Lands; OBERT OLSON, as  
State Treasurer of the State of North Dakota, CARL 4  
KOZITSKY, as State Auditor of the State of North  
Dakota, and LYNN J. FRAZIER, as Governor of said  
State, WILLIAM LANGER, as Attorney General of  
said State, JOHN N. HAGAN, as Commissioner of  
Agriculture and Labor of said State, THOMAS HALL,  
as Secretary of State of said State, and MINNIE  
J. NIELSON, as Superintendent of Public Instruction  
of said State, and LYNN J. FRAZIER, WILLIAM LAN-  
GER, THOMAS HALL, CARL KOZITSKY, OBERT  
OLSON, JOHN N. HAGAN and MINNIE J. NIELSON,  
individually, *Defendants.*



\* BILL OF COMPLAINT

(2)

*To the Honorable, the Judge of the District Court of  
the United States for the District of North Dakota:*

The plaintiffs above named bring this, their bill  
of complaint, against the defendants above named, and  
thereupon complain and allege:

I.

That said plaintiffs are each and all citizens of the  
United States and of the State of North Dakota, and  
that their names, and the counties of their residence  
in the said State are as follows:

John W. Scott, Grand Forks County; William J.  
Howe, Cass County; O. B. Severson, Adams County;  
L. A. Wood, Barnes County; Nels Nichols, Billings  
County; George Sidener, Bottineau County; Emil  
Scow, Bowman County; W. C. Martin, Burke County;  
Henry McLean, Cavalier County; George P. Homnes,  
Divide County; B. W. Hersey, Eddy County; T. W.  
Baker, Foster County; George Christenson, Golden  
Valley County; R. H. Levitt, Grant County; E. J.  
Megeath, Hettinger County; E. A. Anderson, Kidder  
County; S. B. Oakley, LaMoure County; O. F. Bry-  
ant, Logan County; George D. Elliott, McHenry  
County; John Satterlund, McLean County; P. S.  
Chaffee, Mercer County; Alfred Thuring, Nelson  
County; J. S. Garnett, Pembina County; J. E. Baker,  
Ramsey County; John R. Early, Richland County; H.  
C. Johnson, Sargent County; John C. Leach, Sioux

County; Fred Steckner, Slope County; Fred L. Roquette, Stark County; Iver K. Bakken, Steele County; Michael Toay, Stutsman County; J. L. Harvey, Town-  
 er County; William Bennett, Traill County; Nathan Upham, Walsh County; Orlando Brown, Ward Coun-  
 ty; J. O. Hanchett, Wells County; W. W. Wilde, Williams County; Arlo Andrews, Cass County; Dun-  
 can Brownlee, Cass County; W. W. Cofell, LaMoure  
 County; E. B. Roscoe, LaMoure County; C. H. Kin-  
 ney, LaMoure County.

(3)

## \* II.

That the defendants are citizens of the United States and of the State of North Dakota, and are the duly elected, qualified and acting officers of the said State, as follows: Lynn J. Frazier, Governor; William Langer, Attorney General; John N. Hagan, Commis-  
 sioner of Agriculture and Labor, Obert Olson, State Treasurer; Carl Kozitsky, State Auditor; Thomas Hall, Secretary of State, and Minnie J. Nielson, Superintendent of Public Instruction.

## III.

That under section 375 of the Compiled Laws, North Dakota, 1913, the said Lynn J. Frazier as Governor, Carl Kozitsky as State Auditor, William Langer as Attorney General, Obert Olson as State Treasurer, and Thomas Hall as Secretary of State, constitute the State Auditing Board, and as such Board, audit all claims against the State prior to the issuance

13 of the State Auditor's warrant on the Treasurer in  
payment thereof.

#### IV.

14 That under Section 156 of the Constitution of  
North Dakota, Lynn J. Frazier as Governor, William  
Langer as Attorney General, Thomas Hall as Secre-  
tary of State, Carl Kozitsky, as State Auditor, and  
15 Minnie J. Nielson as Superintendent of Public In-  
struction, constitute the Board of University and  
School Lands, and as such have control of the invest-  
ment of the permanent school fund of the State de-  
rived from the rental and sale of all school and uni-  
versity lands given to the State in trust by the United  
States for the support of public schools; and under  
16 section 162 of the State Constitution are authorized  
to invest such funds in State bonds. That said fund  
now consists of \$919,730.16 in cash, \$10,276,964.99  
in municipal bonds, \$5,661,253.61 in loans secured by  
farm mortgages on property within the State of North  
Dakota; and in addition thereto a large acreage of  
16 lands and deferred \* payments upon land sale contracts, (4)  
of such value that the total amount of cash, bonds,  
mortgages, lands and contracts exceed in value the  
sum of \$50,000,000.00.

#### V.

That Obert Olson as State Treasurer is the cus-  
todian of the State's funds derived from taxation, and  
is also custodian of the state school fund, and dis-

burses such school fund upon warrants drawn by the  
State Auditor. 17

• VI.

That Carl Kozitsky as State Auditor directs the  
disbursement of the State funds by warrants upon the  
State Treasurer in payment of moneys directed by law  
to be paid out of the treasury, and by his warrant  
directs the payment of the permanent school fund. 18

VII.

That under the pretended authority of House  
Bill No. 17, passed by the Sixteenth Legislative As-  
sembly of the State of North Dakota, which in form  
took effect on Feb. 26th, 1919, and which is herein-  
after set out in full, the defendants Lynn J. Frazier  
as Governor, John N. Hagan as Commissioner of Agri- 19  
culture and Labor, and William Langer as Attorney  
General, claim and pretend to constitute the Indus-  
trial Commission of North Dakota, and have organ-  
ized, and are now acting as such Commission.

VIII.

That plaintiffs are taxpayers of the State of North 20  
Dakota and are owners of both real and personal  
property in this State, and in the counties of their resi-  
dence, which is subject to taxation to meet the obli-  
gations of the State, and also subject to local taxes.  
That the plaintiffs, and the other taxpayers of the  
State of North Dakota are the beneficial owners, sub-  
ject to the legal and proper use thereof by the State

21 of North Dakota for State purposes, of all moneys  
 and funds now in the treasury of the State of North  
 Dakota, collected by taxation for \* the purpose of de- (5)  
 fraying the expenses of the government of the State,  
 and which funds are held and controlled by the defend-  
 ants, as officers of the State, as hereinbefore described.  
 22 That said funds are held in trust by the defendants  
 in their official capacity, for the plaintiffs and the  
 other taxpayers of the State. That said funds now  
 amount to more than Three Hundred Thousand Dol-  
 lars. That from time to time additional sums of  
 money, amounting to hundreds of thousands of dollars  
 each year, raised by taxation against the property of  
 23 plaintiffs, and the other taxpayers of the State of  
 North Dakota, are being collected and covered into  
 the treasury of the State, for the purpose of defraying  
 the legitimate expenses of the State government, and  
 the defendants, in their official capacity aforesaid,  
 come into the custody and control of said moneys as  
 the same are collected as hereinbefore set forth. That  
 24 the State of North Dakota has no moneys, funds, or  
 property, aside from that collected by the taxation of  
 the property of the plaintiffs and the other taxpayers  
 of the State, except moneys realized from school and  
 institutional lands granted to the State by the United  
 States at the time of admission to the Union. That  
 said school and institutional lands and moneys real-  
 ized therefrom cannot, under the compact with the

United States, be used for any purposes other than the maintenance and support of the schools and institutions of learning of the State and for the purpose of maintaining and supporting other public institutions of the State.

That the plaintiffs bring this action as taxpayers on behalf of themselves and on behalf of the other taxpayers of the state who are many thousand in number, and who have a common and general interest in the questions presented in this case, and are so numerous as to make it impracticable to bring them all before the court.

\* IX.

This is a suit in equity between the plaintiffs and the said defendants, and arises under the constitution and laws of the United States, as hereinafter will more particularly appear; and involves, exclusive of interest and costs, a sum or value in excess of \$300,000.00 of moneys now in the treasury of the State of North Dakota, derived from taxation of property and persons in said state, and \$17,000,000.00 in bonds of the State of North Dakota, to be issued as hereinafter set forth, which said bonds, if permitted to issue, create a charge upon the property of the State of North Dakota, which must be met by the taxation of the people and property of said state; and that each of the matters in controversy in this action, exceeds, exclusive of interest and costs, the sum or value of



29 three thousand dollars, and that each of said matters  
arises under the constitution and laws of the United  
States.

## X.

That the defendants, assuming and claiming to  
act as officers of the State, and in an official capacity,  
and under the pretended authority of certain amend-  
30 ments to the State constitution of North Dakota,  
which are claimed to have become effective on or about  
February 1st, 1919, and certain pretended acts of the  
Sixteenth Legislative Assembly of North Dakota,  
which in form took effect on the 26th day of February,  
1919, all of which are hereinafter set out, threaten  
31 to divert, pay out and transfer, and unless restrained  
and enjoined by this court, will pay out, divert and  
transfer from the general funds of the State, and from  
funds of the cities, villages, townships and school dis-  
tricts of the State derived from taxation, and from  
the permanent school funds of the \* State large sums (7)  
of money in the purchase of the bonds herein referred  
32 to and for other unlawful purposes; and threaten to  
create and issue, and unless restrained and enjoined by  
this court, will create and issue, obligations of the  
State in the form of state bonds, aggregating in  
amount the sum of \$17,000,000.00 for unlawful pur-  
poses, and threaten to negotiate and sell, and unless  
restrained and enjoined by this court, will negotiate  
and sell said bonds, and will pledge the faith and credit  
of the State of North Dakota for the payment thereof.



## XI.

The defendants justify the acts of which complaint is made in this action by the alleged amendments to the state constitution approved on or about February 1st, 1919, and the pretended acts of the Sixteenth Legislative Assembly, approved February 26th, 1919, referred to in paragraph "X" hereof.

## XII.

That prior to 1914, all constitutional amendments were initiated by the Legislature subject to the approval of the electors, such amendments being governed by Section 202 of the State Constitution, which in part reads as follows:

"Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon,

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such amendment or amendments shall become a part of the constitution of this State." \* \* \*

In 1914, Section 202, just quoted, was amended by adding thereto the following:

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\* "Any amendment or amendments to this Constitution (8) may also be proposed by the people by \* \* \* an initiative petition. When such petition has been properly filed the proposed amendment or amendments \* \* \* shall be placed upon the ballot to be voted upon by the people at the next general election. Should any such amendment or amendments proposed by initiative petition and submitted to the people receive a majority of all the legal votes cast at such general election, such amendment or amendments shall be referred to the next Legislative Assembly; and should such proposed amendment or amendments be agreed upon by a majority of all the members elected to each House, such amendment or amendments shall become a part of the Constitution of this State. \* \* \* "

### XIII.

Prior to February 1st, 1919, Section 185 of the State constitution was in force and read as follows:

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"Neither the State nor any county, city, township, town, school district, or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation except for necessary support of the poor; nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people. PROVIDED, that the State may appropriate money in the treasury or to be thereafter raised by taxation for the construction or improvement of public highways."

That on February 1st, 1919, the foregoing section was in form amended to read as follows: 41

"Section 185, Article 12 as amended by Article 18 of amendment. The state, any county or city may make internal improvements and may engage in any industry, enterprise or business not prohibited by Article 20 of the Constitution (the manufacture and sale of intoxicating liquor), but neither the State nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation, except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation." 42

#### XIV.

That prior to February 1st, 1919, the State debt limit was fixed by Section 182 of the State Constitution at \$200,000, which so far as material, follows: 43

"The State may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota at the time of the adoption of this Constitution. \* \* \* No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense, in case of threatened hostilities." 44

(9) \* That said section 182 of the constitution was in form amended on February 1st, 1919, to read as follows:

"Section 182 in Article 12. The State may issue or guarantee the payment of bonds, provid-

45 ing that all bonds in excess of two million dollars  
shall be secured by first mortgages upon real es-  
tate in amounts not to exceed one half of its  
value; or upon real estate and personal property  
of state-owned utilities, enterprises or industries,  
in amounts not exceeding its value, and provided,  
46 further, that the State shall not issue or guaran-  
tee bonds upon property of state-owned utilities,  
enterprises or industries in excess of ten million  
dollars. No future indebtedness shall be incurred  
by the State unless evidenced by bond issue, which  
shall be authorized by law for certain purposes,  
to be clearly defined. Every law authorizing a  
bond issue shall provide for levying an annual  
tax, or make other provisions sufficient to pay the  
interest semi-annually, and the principal within  
thirty years from the passage of such law, and  
shall specially appropriate the proceeds of such  
tax, or of such other provisions to the payment  
47 of said principal and interest, and such appro-  
priation shall not be repealed nor the tax or other  
provisions discontinued until such debt, both prin-  
cipal and interest, shall have been paid. No debt  
in excess of the limit named herein shall be in-  
curred except for the purpose of repelling inva-  
sion, suppressing insurrection, defending the State  
in time of war, or to provide for the public de-  
fense in case of threatened hostilities.

## XV.

48 That the pretended amendments to Sections 182  
and 185 of the State Constitution hereinbefore set out,  
and the acts of the legislature of the State of North  
Dakota, adopted in pursuance and under the pretended  
authority thereof and referred to herein, are void and  
of no force or validity, for the following reason,  
among others, to-wit: That said constitutional amend-  
ments were submitted and voted upon at the general

election held in the fall of 1918, and did not receive  
a majority of all the legal votes cast at such election.

## XVI.

That the Sixteenth Legislative Assembly of the  
State of North Dakota, after in form approving the  
constitutional amendments hereinbefore referred to,  
and for the purpose of carrying out the Industrial  
program thereunder and therein authorized, passed the  
following acts, all of which were declared adopted by  
sufficient vote to place them in operation on their ap-  
proval, and which said pretended acts were approved  
on February 26, 1919, to-wit: House Bills 17, 18 and  
49, and Senate Bills 130, 20, 75 and 19.

## \* XVII.

That the several legislative acts above referred to  
and here in question, for convenience of reference will  
hereafter be referred to as follows:

House Bill 17 as "The Industrial Commission  
Act."

House Bill 18 as "The Bank of North Dakota  
Act."

House Bill 49 as "The Bank of North Dakota  
Bond Act."

Senate Bill 130 as "The Bank of North Dakota  
Real Estate Bond Act."

Senate Bill 20 as "The Mill and Elevator Asso-  
ciation Act."

52 Senate Bill 75 as "The Mill and Elevator Association Bond Act."

Senate Bill 19 as "The Home Building Act."

Which said acts are now set out in full in the order in which they are above named.

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34 INDUSTRIAL COMMISSION ACT — HOUSE  
BILL NO. 17.  
AN ACT

Creating the Industrial Commission of North Dakota, authorizing it to conduct and manage on behalf of the State, certain utilities, industries, enterprises and business projects, and defining its powers and duties; and  
55 making an appropriation therefor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A commission is hereby created and established to conduct and manage, on behalf of the State of North Dakota, certain utilities, industries,  
5 enterprises and business projects, now or hereafter established by law. It shall be known as the Industrial Commission of North Dakota, but may be designated as the Industrial Commission.

SECTION 2. The Industrial Commission shall consist of three members, namely: The Governor, the Attorney General, and the Commissioner of Agriculture and Labor, of the State of North Dakota. Two

11) members shall constitute a quorum for the \* transaction of business. The first meeting of the Commission shall be held in the office of the Governor, at his call, within twenty days after this Act goes into effect. Its meetings thereafter shall be held at such times and places as the Governor or a majority of the Commission may determine. It shall be provided by the proper authorities with suitably furnished offices at the seat of government. 57 58

SECTION 3. The Governor shall be the Chairman of the Industrial Commission, and its attorney shall be the Attorney General of the State. In the transaction of its general business it may employ secretaries and other subordinate officers, clerks and agents, on such terms as it may deem proper, appointing and discharging all persons so engaged when and as, in its judgment, the public interests may require. The Commission may require suitable bonds of any such secretary or other subordinate officer, clerk or agent, and shall fix the amount of the compensation of each. Such compensation together with other expenditures for operation and maintenance of the general business of the Commission, shall remain within the appropriation available in each year for such purpose. 59 8

SECTION 4. The Industrial Commission shall adopt and procure an official seal, and may authenticate therewith its documentary acts. All orders, rules,



61 regulations, by-laws and written contracts, adopted or authorized by the Commission shall, before becoming effective, be approved by the Governor, as Chairman, and shall not be in force unless approved and signed by him.

62 SECTION 5. The Industrial Commission is hereby empowered and directed to manage, operate, control and govern all utilities, industries, enterprises and business projects, now or hereafter established, owned, undertaken, administered or operated by the State of North Dakota, except those carried on in penal, charitable or educational institutions. To that end it shall have the power, in the exercise of its sound judgment, and is \* hereby directed: (12)

(a) To determine the locations of such utilities, industries, enterprises and business projects.

64 (b) For the State, and in its name and behalf, in order to accomplish the purposes of this Act, to acquire by purchase, lease or by exercise of the right of eminent domain, as provided by Chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all necessary properties and property rights and to hold and possess or to sell the whole or any part thereof; to construct and reconstruct necessary buildings thereon, to equip, maintain, repair, and alter any and all such properties and the improvements thereon; and generally to use the same so as to promote such utilities, industries, enterprises and business projects.

(c) To appoint a Manager, and all necessary subordinate officers and employees, of and for each such utility, industry, enterprise and business project; to constitute any such Manager its general agent in the performance of its duties in the particular utility, industry, enterprise or business project in which he shall be engaged, but subject, nevertheless, in such agency to the supervision, limitation and control of the Commission; to employ such contractors, architects, builders, attorneys, salesmen, clerks, accountants and other experts, agents and servants, as in the judgment of the Commission and the interests of the State may require; and to define the duties, designate the titles, and fix the compensation and bonds, of all such persons so engaged in each such utility, industry, enterprise and business project; provided, however, that subject to the control and regulation of the Commission the manager of each such utility, industry, enterprise and business project shall appoint and employ such deputies, assistants and other subordinates, and such contractors, architects, builders, attorneys, salesmen, clerks, accountants and other experts, agents and servants, as he shall in his judgment deem are required by the interests of the utility, industry, enterprise or business project of which he shall be in charge. The total compensation of such appointees and employees engaged in each several utility, industry, enterprise and business project \* together with other expen-

6 ditures for the operation and maintenance thereof, shall remain within the appropriation and earnings lawfully available in each year for such purpose.

70 (d) To remove and discharge any and all persons appointed in the exercise of the powers granted by this Act, whether by the Commission or by any manager of any utility, industry, enterprise or business project; and any such removal may be made whenever in the judgment of the Commission the public interests require it; provided, however, that all appointments and removals contemplated by this Act shall be so made as the Commission shall deem most fit to promote the efficiency of the public service.

71 (e) To fix the buying price of things bought and the selling price of things sold, incidental to the said utilities, industries, enterprises and business projects, and to fix rates and charges for any and all services rendered thereby. In fixing such prices, rates and charges, the Commission shall make provision for  
72 accumulating a fund with which to replace, in the general funds of the State, the amount received by the Commission under the appropriation made in this Act, as may be directed by the legislative assembly.

(f) To make rules, regulations, orders and by-laws for the management and operation, and for the transaction of the business, of such utilities, industries, enterprises and business projects.

(g) To procure the necessary funds for such  
 utilities, industries, enterprises and business projects  
 by negotiating the bonds of the State of North Da-  
 kota in such amounts and in such manner as may be  
 provided by law. 73

(h) To conduct investigations of all matters  
 directly or indirectly connected with, or bearing upon  
 the success of, any of the utilities, industries, enter- 74  
 prises, and business projects under its management,  
 and of all matters which may directly or indirectly  
 affect the methods, operations, processes, products or re-  
 sults thereof. In aid of any such investigation the Com-  
 missioner \* shall have the power to summon and com-  
 pel the attendance of witnesses, and to examine them 75  
 under oath, which any member thereof shall have the  
 power to administer. It shall have access to and may  
 order the production of, all books, accounts, papers  
 and property, material to such investigation. Wit-  
 nesses other than those in the employ of the state shall  
 be entitled to the same fees as in civil cases in the dis-  
 trict court. The claim that any testimony or evidence 76  
 sought to be elicited or produced on such examination  
 may tend to criminate the person giving or producing  
 it, or expose him to public ignominy, shall not excuse  
 him from testifying or producing evidence, documen-  
 tary or otherwise; but no person shall be prosecuted  
 or subjected to any penalty or forfeiture for and on  
 account of any matter or thing concerning which he

77 may testify or produce such evidence; provided, that  
 he shall not be exempted from prosecution and punish-  
 ment for perjury committed in so testifying. It shall  
 be the duty of the Commission to cause the testimony  
 so taken to be transcribed and filed in the office of the  
 Commission at the seat of government, within ten days  
 after it is taken, or as soon thereafter as practicable,  
 78 and when so filed it shall be open for inspection by any  
 person. Any person failing or refusing to obey the  
 order of the Commission issued under the provisions  
 of this section, or to give or produce evidence when  
 required, shall be reported by the Commission to the  
 district court or any judge thereof, and shall be dealt  
 with by the court or judge as for contempt of court.

79 (i) To make rules and regulations for its own  
 procedure; and to do any and all things necessary or  
 expedient in conducting the business of such utilities,  
 industries, enterprises and business projects, and in the  
 accomplishment of the purposes of this Act.

SECTION 6. The Industrial Commission shall  
 80 prepare an annual report and file it in the office of the  
 Secretary of \* State not later than the first day of Feb- (1)  
 ruary of each year. The report shall contain an item-  
 ized account of its expenditures and a complete and  
 detailed financial statement of each utility, industry,  
 enterprise and business project under its control, show-  
 ing fully all items of income and disbursements and  
 liabilities of every nature for the calendar year ending

December 31st next preceding. The report shall also  
 set forth a list of all persons in the employ of the  
 Commission, with the name of each person drawing  
 a salary under its authority, the amount of the salary  
 and all other emoluments received, and the fund from  
 which drawn. 181

SECTION 7. There is hereby appropriated out  
 of the general funds of the State, not otherwise ap- 182  
 propriated, two hundred thousand dollars, or so much  
 thereof as may be necessary, to carry out the provi-  
 sions of this Act. This appropriation is hereby made  
 available immediately upon the passage and approval  
 of this act.

SECTION 8. This Act is hereby declared to be 183  
 an emergency measure and shall take effect and be in  
 force from and after its passage and approval.

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BANK OF NORTH DAKOTA ACT—HOUSE  
 BILL NO. 18  
 AN ACT

Declaring the purpose of the State of North Dakota 184  
 to engage in the banking business and establishing a  
 system of banking under the name of the Bank of  
 North Dakota, operated by the State, and defining the  
 scope and manner of its operation and the powers and  
 duties of the persons charged with its management;  
 making an appropriation therefor; and providing pen-  
 alties for the violations of certain provisions thereof:



BE IT ENACTED BY THE LEGISLATIVE  
ASSEMBLY OF THE STATE OF NORTH  
DAKOTA:

\* SECTION 1. For the purpose of encouraging (10  
and promoting agriculture, commerce and industry, the  
State of North Dakota shall engage in the business  
of banking, and for that purpose shall, and does here-  
by, establish a system of banking owned, controlled  
and operated by it, under the name of the Bank of  
North Dakota.

SECTION 2. The Industrial Commission shall  
operate, manage and control the Bank of North Da-  
kota, locate and maintain its places of business, of  
which the principal place shall be within the State,  
and make and enforce orders, rules, regulations and  
by-laws for the transaction of its business. The busi-  
ness of the Bank, in addition to the other matters  
herein specified, may include anything that any bank  
may lawfully do, except as herein restricted; but this  
provision shall not be held in any way to limit or  
qualify either the powers of the Industrial Commission  
herein granted, or the functions of said Bank herein  
defined. The Industrial Commission shall meet with-  
in twenty days after the passage and approval of this  
Act to begin the organization of the Bank.

SECTION 3. To accomplish the purposes of  
this Act, the Industrial Commission shall acquire by  
purchase, lease or by exercise of the right of eminent



domain, as provided by chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all requisite property and property rights, and may construct, remodel and repair buildings; but it shall not invest more than ten per cent of the capital of the bank in furniture, fixtures, lands and buildings for office purposes. 8

SECTION 4. The Industrial Commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the Bank. To that end it shall appoint a manager, and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such manager its general agent, in respect to the functions of said \* Bank, but subject, nevertheless, in such agency, to the supervision, limitation and control of the Commission. It shall employ such contractors, architects, builders, attorneys, cashiers, tellers, clerks, accountants, and other experts, agents and servants as in the judgment of the Commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the Commission, the Manager of the bank shall appoint and employ such deputies, cashiers, tellers, and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants, as he shall, in his judgment, deem are re- 10 8

23 required by the interest of the Bank. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the Bank, shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employees of the Bank engaged upon its financial functions shall, before entering upon their duties, respectively furnish good and sufficient bonds to the State in such amount and upon such conditions as the Commission may require and approve; but the bond of the manager shall not be less than fifty thousand dollars. Such bond shall be filed with the Secretary of State.

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25 SECTION 5. The Industrial Commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this Act, whether by the Commission or by the Manager of the Bank, and any such removal may be made whenever in the judgment of the Commission the public interests require it; provided, however, that all appointments and removals contemplated by this Act shall be so made as the Commission shall deem most fit to promote the efficiency of the public service.

SECTION 6. The Bank shall be opened and shall proceed to \*transact business whenever there shall (18) be delivered to the Industrial Commission bonds in the sum of two million dollars issued by the State as may be provided by law for such purpose. The fund

procured by the negotiation and sale of such bonds is  
hereby designated and shall be known as the capital  
of said Bank. 97

SECTION 7. All state, county, township, municipal and school district funds, and funds of all penal, educational and industrial institutions and all other public funds shall be, by the persons having control of such funds, deposited in the Bank of North Dakota within three months from the passage and approval of this Act, subject to disbursement for public purposes on checks drawn by the proper officials in the manner now or hereafter to be provided by law; provided, however, that on a proper showing made by any official having control of public funds, the Industrial Commission may permit a postponement of the deposit of such funds or any part thereof in the Bank of North Dakota, the period of such postponement not to exceed six months. And provided further, that if any such funds are now loaned by authority of law under a contract terminating at a future time, then the deposit of such funds in the Bank of North Dakota shall not be required until two months after the time of expiration of such contract. Any person who shall violate any of the provisions of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in a county jail for not less than ninety days, and by a fine of not less than one hundred dollars. 98 100

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SECTION 8. Whenever any of the public funds hereinbefore designated shall be deposited in the Bank of North Dakota, as hereinbefore provided, the official having control thereof, and the sureties on the bond of every such official, shall be exempt from all liability by reason of the loss of any such deposited funds while so deposited.

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\* SECTION 9. The Bank of North Dakota may receive deposits from any source, including the United States Government and any foreign or domestic individual, corporation, association, municipality, bank or government. Funds may be deposited to the credit of the Bank of North Dakota in any bank or agency approved by the Industrial Commission.

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SECTION 10. All deposits in the Bank of North Dakota are hereby guaranteed by the State. Such deposits shall be exempt from state, county and municipal taxes of any and all kinds.

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SECTION 11. Funds deposited by State Banks in the Bank of North Dakota shall be deemed "available funds" within the meaning of that term as used in Section 5170 of the Compiled Laws of 1913. For banks that make the Bank of North Dakota a reserve depository, it may perform the functions and render the services of a clearing house, including all facilities for providing domestic and foreign exchange, and may re-discount paper, on such terms as the Industrial Commission shall provide.

SECTION 12. The Industrial Commission unless otherwise limited by law, shall from time to time fix the rates of interest allowed and received in transactions of the Bank. Such rates shall be as nearly uniform and constant as practicable, and shall not be fixed or changed to work any discrimination against or in favor of any person or corporation. But in respect to time deposits received by the Bank, transactions may be reasonably classified as to the amounts and the duration of time involved, and a reasonable differentiation of interest rates based on such classification may be allowed. When interest is allowed on any deposits it shall not be less than one or more than six per cent. The Industrial Commission shall also fix reasonable charges, without unjust discrimination, for any and all services rendered by the Bank.

\* SECTION 13. All checks and other instruments and items of exchange payable on demand, sent by the Bank of North Dakota to any State Bank or banking association in North Dakota, for collection, shall be by such State Bank or banking association remitted for at par to the Bank of North Dakota. Any person or corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor.

SECTION 14. The Bank of North Dakota may deposit funds in any bank or banking association with or without the State upon such terms and conditions as the Industrial Commission shall determine.

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SECTION 15. The Bank of North Dakota may transfer funds to other departments, institutions, utilities, industries, enterprises or business projects of the State, which shall be returned with interest to the Bank. It may make loans to counties, cities or political subdivisions of the State, or to state or national banks, on such terms, and under such rules and regulations, as the Industrial Commission may determine; but it shall not make loans or give its credit to any individual, association or private corporation, except that it may make loans to any individual, association or private corporation, secured by duly recorded first mortgages on real estate in the State of North Dakota in amounts not to exceed one half the value of the security, or secured by warehouse receipts issued by the Industrial Commission or by any licensed warehouse within the State, in amounts not to exceed ninety per cent of the value of the commodities evidenced thereby. It shall not, however, loan on real estate security more than thirty per cent of its capital, nor in addition thereto, more than thirty per cent of its capital, nor in addition thereto, more than twenty per cent of its deposits. Additional funds that may be required for such real estate loans, shall be procured from the sale of State bonds as may be provided by law.

\* SECTION 16. The Industrial Commission shall (21)  
prescribe form of application for a mortgage loan on



real estate, and shall provide for appraisal of the proposed security. Until otherwise provided by the Commission, when an application for a mortgage loan on real estate is made, it shall be referred to the Commissioner of University and School Lands, for appraisal of the proposed security. The Commissioner of University and School Lands shall thereupon promptly cause it to be appraised in the same manner as school lands are appraised, and upon completion of such appraisal, shall return the application, together with the appraisal, to the Bank. Thereupon the Bank shall promptly determine whether to grant or refuse any part or all of such loan.

SECTION 17. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual installment; sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of real estate loan bonds issued, if any, by the State of North Dakota; second, a charge for administration and surplus, at a rate not exceeding one per cent per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt in not less than ten nor more than thirty years; provided, however, that advance payment of one or more annual installments, for the reduction of the principal, or the



117 payment of the entire principal, may be made at any  
regular installment date; and provided further, that in  
case of a crop failure which reduces the mortgagor's  
reasonable crop income by one half, all payments un-  
der said mortgage may, in the discretion of the In-  
dustrial Commission, be extended for one year, upon  
condition that on the payment of all installments, such  
118 further annual payments \* shall be made as will pay the (22)  
interest, with interest thereon, for the years for which  
no payments were made. The Industrial Commission  
shall determine whether a mortgagor is entitled to an  
extension of the payment of any installment, under  
the provision of this Section.

119 SECTION 18. Every such mortgage, and the  
note or other obligation thereby secured, shall run to  
"The Manager of the Bank of North Dakota, his suc-  
cessors in office or his assigns," as payee and mortga-  
gee, and shall contain a recital that it is executed and  
delivered in conformity with and upon the conditions  
expressed in this Act, designated by its title and the  
120 date of its approval. After having been duly recorded  
in each county in which the lands therein described  
are situated, every such mortgage shall be delivered  
to the Manager of said Bank and together with said  
note or other obligation shall be held by the manager  
as a part of the assets of the Bank, or shall be other-  
wise disposed of as hereafter provided. If so held,  
payments upon the note or other obligation secured by

said mortgage shall be made to the Bank of North Dakota, and whenever it shall have been fully paid, the Manager shall promptly satisfy and discharge the mortgage lien of record and deliver the mortgage cancelled, with a satisfaction thereof, to the person entitled to receive it. 121

SECTION 19. Every such mortgage, together with the note or other obligation thereby secured, may be sold and assigned upon the payment to the Bank of the full value thereof, and upon such sale and assignment the Manager may endorse either with or without recourse. In that case payments upon said note or other obligation shall be made to the person entitled to receive them; but each such assignment shall be made subject to the provisions concerning extension of the time of payments on account of crop failures as provided in Section 17 of this Act, and subsequent action of the Industrial Commission in that regard shall be binding upon the assignee of such mortgage; provided, however, that after assignment of such mortgage extensions of payments for a yearly period shall be limited in total number to not more than one for every period of five years or fraction thereof during which such mortgage has to run after the date of assignment. 122 123 124

SECTION 20. Every such mortgage, together with the note or other obligation thereby secured, may be assigned, and upon order of the Industrial Commis-

125 sion shall be assigned, to the State Treasurer of the  
 State of North Dakota as security for bonds to be  
 issued by the State as provided by law. In case of  
 such assignment all payments due upon said note or  
 other obligation shall be made to the State Treasurer,  
 and the money so by him received shall be by him held  
 or disbursed as may be provided by law. If while any  
 126 such mortgage so assigned to the State Treasurer is in  
 his hands, the note or obligation thereby secured shall  
 have been fully paid, the State Treasurer shall so cer-  
 tify to the Manager of the Bank, who shall thereupon  
 proceed to satisfy said mortgage in the same manner  
 as though said note or other obligation had been paid  
 directly to the Bank. In case of such assignment to  
 127 the State Treasurer of any such mortgage, the pro-  
 visions contained in Section 19 of this Act, respecting  
 extensions on account of crop failure, shall be effective  
 and shall be applied.

SECTION 21. All business of the Bank may be  
 conducted under the name of "The Bank of North  
 128 Dakota." Title to property pertaining to the opera-  
 tion of the Bank shall be obtained and conveyed in the  
 name of "The State of North Dakota, doing business  
 as the Bank of North Dakota." Written instruments  
 shall be executed in the name of the State of North  
 Dakota, signed by any two members of the Industrial  
 Commission, of whom the Governor shall be one, or  
 by the manager of the Bank of North Dakota, within

the scope of his authority so to do as defined by the Industrial Commission. 129

\* SECTION 22. Civil actions may be brought against the State of North Dakota on account of causes of action claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota, upon condition that the provisions of this section are complied with. In such actions the State shall be designated as "The State of North Dakota, doing business as the Bank of North Dakota," and the service of process therein shall be made upon the Manager of said Bank. Such actions may be brought in the same manner and shall be subject to the same provisions of law as other civil actions brought pursuant to the provisions of the Code of Civil Procedure. Such actions shall be brought, however, in the county where the Bank of North Dakota shall have its principal place of business, except as provided in Sections 7415, 7416 and 7418, Compiled Laws of North Dakota, 1913. The provisions of sections 375 and 657 of the Compiled Laws of 1913 shall not apply to claims against the State, affected by the provisions of this section. 130 131 132

SECTION 23. The State Examiner shall personally or through deputy examiners, visit the Bank of North Dakota at least twice annually, and shall inspect and verify the assets in its possession and under its control, with sufficient thoroughness of investigation

133 to ascertain with reasonable certainty whether the val-  
uations are correctly carried on its books. He shall  
investigate its methods of operation and accounting.  
He shall report the results of each such examination  
and investigation to the Industrial Commission as soon  
as practicable, and to the Legislative Assembly at its  
134 next ensuing session, and, as provided in paragraph  
numbered 5 of section 5146 of the Civil Code, Com-  
piled Laws, 1913, to the State Banking Board.

\* SECTION 24. There is hereby appropriated (25  
out of the general funds of the State not otherwise  
appropriated, one hundred thousand dollars, or so  
135 much thereof as may be necessary to carry out the pro-  
visions of this Act. This appropriation is hereby made  
available immediately upon the passage and approval  
of this Act. The Industrial Commission shall, out of  
the earnings of the Bank, make provision for accu-  
mulating a fund with which to replace in the general  
136 funds of the State the amount received by the Com-  
mission under this appropriation, as may be directed  
by the Legislative Assembly.

SECTION 25. All acts and parts of acts in-  
consistent with this Act are hereby repealed.

SECTION 26. This Act is hereby declared to  
be an emergency measure and shall take effect and be  
in force from and after its passage and approval.

BANK OF NORTH DAKOTA BOND ACT— 137  
 HOUSE BILL NO. 49  
 AN ACT

Providing for the issuing of bonds of the State of North Dakota in the sum of two million dollars, to be known as "Bonds of North Dakota, Bank Series"; prescribing the terms, and stating the purposes thereof; providing a tax and making other provision for the payment thereof; making appropriations for the payment of said bonds and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure. 138

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA: 139

SECTION 1. The State Treasurer is hereby directed forthwith to prepare for issue, and the Governor and the State Treasurer are hereby authorized, empowered and directed to issue, negotiable bonds of the State of North Dakota in the aggregate \* amount of two million dollars. They shall be executed by the Governor and the State Treasurer under the great seal of the State, and shall be attested by the Secretary of State. The Auditor and Secretary of State shall endorse and sign on each such bond a certificate showing that it is issued pursuant to law and is within the debt limit. The bonds so issued shall be designated "Bonds of North Dakota, Bank Series." 140



141 SECTION 2. The bonds so issued shall be pay-  
able to the purchaser or bearer; provided, however,  
that the provisions of Section 151 Compiled Laws of  
1913 are hereby declared to apply to them. They shall  
be issued in denominations of from five dollars to ten  
thousand dollars, and shall be payable in not less than  
142 ten nor more than thirty years from the passage of  
this act. They shall bear interest at a rate not ex-  
ceeding six per cent per annum from their date until  
maturity, payable semi-annually on the first day of  
January and of July in each year; and coupons shall  
be attached to each bond, evidencing the amount of  
interest payable at each first day of January and July  
143 until maturity. Principal and interest shall be payable  
at the office of the State Treasurer in Bismarck. The  
terms of said bonds, as to values of denominations,  
periods of maturity and rates of interest, shall be fixed  
by the Governor in his sound judgment, within the  
limitations above stated. Every such bond and coupon  
must be presented for payment at the office of the  
144 State Treasurer within six years from the date of its  
maturity; and no such bond or coupon shall bear in-  
terest after maturity unless payment thereof shall not  
be made upon due presentation for payment. All said  
bonds shall be exempt from state, county and municipi-  
pal taxes of any and all kinds.

SECTION 3. The said issue of bonds is auth-  
orized for the purpose of making delivery thereof to



27) the Industrial \* Commission of North Dakota is here-  
 inafter provided, and as contemplated by section six  
 of the act entitled "An Act declaring the purpose of  
 the State of North Dakota to engage in the banking  
 business and establishing a system of banking under  
 the name of the Bank of North Dakota, operated by  
 the State, and defining the scope and manner of its  
 operation and the powers and duties of the persons  
 charged with its management; making an appropri-  
 ation therefor; and providing penalties for the violation  
 of certain provisions thereof," enacted the year 1919  
 by the Sixteenth Session of the Legislative Assembly  
 of North Dakota, being House Bill number 18 and also  
 by Section 5, paragraph (g) of the Act entitled "An  
 Act creating the Industrial Commission of North Da-  
 kota, authorizing it to conduct and manage on behalf  
 of the State certain utilities, industries, enterprises and  
 business projects, and defining its power and duties,  
 and making an appropriation therefor," enacted in the  
 year 1919 by the Sixteenth Session of the Legislative  
 Assembly of North Dakota, being House bill No.  
 17, and for the purpose of enabling the In-  
 dustrial Commission to negotiate and sell such bonds,  
 pursuant to the provisions of this Act and of said Sec-  
 tion Five, paragraph (g) of the Act entitled as last  
 above stated, being House Bill Number 17 of the Six-  
 teenth Session of the Legislative Assembly of North  
 Dakota in the year 1919; thereby to procure the fund

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to be designated as the capital of the Bank of North Dakota.

SECTION 4. In furtherance of the purposes declared by this Act, it is hereby made the duty of the Governor and the State Treasurer, after the issue, execution, sealing and attestation of said bonds to deliver them to the Industrial Commission in such denominations and amounts bearing interest at such rates, and running to such periods of maturity, as may be \* determined by the Governor, in his discretion, upon consideration of such recommendations as the Commission may make in regard thereto. The Industrial Commission is empowered, authorized and directed, in connection with and in addition to its other powers and duties, to act as the agent of the State for the negotiation, sale and delivery of said bonds. It shall sell them for cash in such manner and at such terms as in its sound discretion it shall deem most advantageous to the interests of the State. The Commission is hereby authorized to receive all moneys paid by buyers of said bonds, upon the sale thereof, and upon receipt of the purchase price to deliver to each purchaser the bonds by him purchased. Upon such delivery of bonds so purchased and paid for, the faith and credit of the State of North Dakota is pledged for the payment thereof, both principal and interest, to the lawful holder and owner thereof upon presentation for payment, according to law. The moneys so derived

and received from the sale of said bonds shall constitute the fund to be designated as the capital of the Bank of North Dakota, and shall be so employed by the Industrial Commission. Nothing in this Act, however, shall be construed to prevent the purchase of any of said bonds with any funds in the Bank of North Dakota.

SECTION 5. From time to time the Industrial Commission shall, out of the earnings derived from the operation of the Bank of North Dakota, pay to the State Treasurer such moneys as the Commission shall deem available to devote to the purpose of paying said bonds and interest. In making such payment the Commission shall file a statement with the State Treasurer specifying the purpose of such payment. When moneys shall have been so paid to the State Treasurer, he shall apply the same to their specified purpose as hereinafter directed.

SECTION 6. At the time of each annual meeting of the State \* Board of Equalization hereafter, the Industrial Commission shall deliver to said Board an exact written statement of all bonds issued under the provisions of this Act outstanding at that time, including therein the dates of maturity, interest rates and all other information proper to enable the Board intelligently to comply with the provisions of this Act in regard to tax levies. On the basis of such information the State Board of Equalization shall annually

151 levy a tax, at the time other taxes are levied, sufficient  
 in amount to pay such interest on said bonds as will  
 become due during the year beginning on the next en-  
 suing first day of January, and said tax shall be col-  
 lected in the same manner as other state taxes are  
 collected. In determining, however, the amount of  
 152 the tax sufficient for such purpose the Board of Equal-  
 153 ization shall take into account whatever moneys, if  
 any, shall then have been paid to the State Treasurer  
 by the Industrial Commission, as provided by Section  
 5 of this Act, for the specific purpose of paying such  
 interest. The Board of Equalization shall apply to  
 the State Treasurer for information as to the amount  
 154 of such moneys and he shall forthwith supply the in-  
 155 formation requested. If the amount of such moneys  
 shall equal or exceed the amount of the interest on said  
 bonds payable during said year beginning on the next  
 ensuing first day of January, then no tax shall be  
 levied by the Board of Equalization for that purpose;  
 but if the amount of such moneys shall be less than the  
 156 amount of the interest on said bonds payable during  
 157 said year, then the Board of Equalization shall deduct  
 the amount of said moneys in the possession of the  
 Treasurer from the amount of the interest so payable,  
 and shall levy the tax hereinbefore in this section pro-  
 158 vided for at least the difference between said amounts.

SECTION 7. Whenever it shall appear to the  
 Board of Equalization from the information contained

in any statement \*delivered to it by the Industrial Com-  
 mission at any annual meeting of said Board, as pro-  
 vided in Section 6, above, that there will mature, with-  
 in a period of five years, from such annual meeting,  
 any of the bonds provided for in this Act, the Board  
 of Equalization shall thereupon, at such annual meet-  
 ing levy a tax in an amount equal to one-fifth of the  
 amount of the principal of such bonds; provided, how-  
 ever, that in determining the amount of such tax, the  
 Board of Equalization shall take into account what-  
 ever moneys, if any, shall have been paid to the State  
 Treasurer by the Industrial Commission for the spe-  
 cific purpose of paying the principal of said bonds when  
 due, as provided in section 5 of this Act. The Board  
 of Equalization shall apply to the State Treasurer for  
 information as to the amount of such moneys and as  
 to the times when paid to him. If the amount of such  
 moneys paid to the Treasurer since the date of the last  
 preceding tax levy made by the Board of Equalization  
 shall equal or exceed one-fifth of the amount of the  
 bonds so to mature, then such tax shall not be levied;  
 but if the amount of such moneys paid to the State  
 Treasurer since the date of the last preceding tax levy  
 shall be less than one-fifth of the amount of said bonds  
 so to mature, then the Board of Equalization shall de-  
 duct the amount of such moneys, so paid, from such  
 one-fifth of said bonds, and shall levy the tax, here-  
 inbefore in this section provided, for the difference.

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165 It is the intention of this Section to provide that in  
 each of the last five years, before the maturity of any  
 said bonds, a state tax shall be levied which, together  
 with such moneys as shall during the next preceding  
 year have been paid to the State Treasurer, by the  
 Industrial Commission for the purpose, shall be at  
 166 least sufficient to pay one-fifth part of the principal  
 of said bonds.

SECTION 8. To identify and distinguish the  
 funds provided and available for the payment of the  
 bonds issued pursuant to \* this Act, there is hereby  
 created and established, as a part of the moneys of  
 the State received and kept by the State Treasurer,  
 167 a fund to be designated the "Bank Bond Payment  
 Fund." All moneys received by the State Treasurer,  
 whether from the proceeds of taxes, or from pay-  
 ments made by the Industrial Commission, or from  
 legislative appropriation, or otherwise, which shall be  
 by law or by other authoritative designation made ap-  
 plicable to the payment of the said bonds, or interest  
 168 thereon, shall be by him kept in said fund distinct  
 from all other moneys, and shall be disbursed by him  
 only for the particular purpose or purposes for which  
 such moneys shall be delivered to him; and no other  
 appropriation shall ever be made of the moneys in  
 said fund until the said bonds shall be fully paid. But  
 this Act shall not be construed as preventing the State  
 Treasurer from depositing said funds in the Bank of



North Dakota, as provided by law with respect to all public funds. 168

SECTION 9. There is hereby appropriated, all of the moneys obtained as proceeds of the taxes provided for in sections 6 and 7 above, and all moneys paid to the State Treasurer by the Industrial Commission as specified in Section 5 above, and all moneys constituting the Bank Bond Payment Fund, or so much thereof as may be from time to time necessary, to pay the interest and principal upon the said bonds as payments thereon shall become due; and whenever any of said bonds or any coupons thereon, being due, shall be presented for payment, the State Treasurer shall pay the same out of the fund applicable thereto. If for any reason the said fund shall for the time being, be insufficient, the Treasurer shall supply the deficiency out of any other available moneys of the State in his custody; but in that case he shall as soon as possible, out of the Bank Bond Payment Fund, return the amount of such deficiency to the source whence taken. 170 171 172

SECTION 10. There is hereby appropriated out of the \* general funds of the State, not otherwise appropriated, ten thousand dollars, or as much thereof as may be necessary to carry out the provisions of this Act. This appropriation is hereby made available immediately upon the passage and approval of this Act.

SECTION 11. This Act is hereby declared to

173 be an emergency measure and shall take effect and  
be in force from and after its passage and approval;  
and the provisions of sections 6, 7, 8 and 9 hereof  
shall remain in full force and effect throughout the  
period of thirty-six years from and after the passage  
of this Act.

174 NORTH DAKOTA REAL ESTATE BOND ACT—  
SENATE BILL NO. 130

AN ACT

175 Providing for the issuing of bonds of the State of  
North Dakota in a sum not exceeding Ten Million  
Dollars, to be known as "Bonds of North Dakota,  
Real Estate Series"; prescribing the terms and stating  
the purposes thereof; providing for a tax and making  
other provisions for the payment thereof; making ap-  
propriations and other provisions for the payment of  
interest and principal on said bonds, and to carry into  
effect the provisions of this Act; and declaring this  
Act to be an emergency measure.

176 BE IT ENACTED BY THE LEGISLATIVE  
ASSEMBLY OF THE STATE OF NORTH  
DAKOTA:

SECTION 1. An issue of bonds of the State  
of North Dakota, to be known as "Bonds of North  
Dakota, Real Estate Series," is hereby authorized and  
directed under the conditions and in the manner and  
for the purposes hereinafter set forth.

## SECTION 2. Whenever first mortgages upon 177

real estate, such as are authorized by the Act entitled  
 "An Act declaring the purpose of the State of North  
 Dakota to engage in the banking business and estab-  
 (33) lishing a system of banking under the name of \* the  
 Bank of North Dakota, operated by the State, and  
 defining the scope and manner of its operation, and  
 the powers and duties of the persons charged with its 178  
 management; making an appropriation therefor; and  
 providing penalties for the violation of certain provi-  
 sions thereof," enacted in the year 1919 by the Six-  
 teenth Session of the Legislative Assembly of North  
 Dakota, being House Bill No. 18, hereinafter called  
 the Bank Act, shall be held by the Bank of North 179  
 Dakota, securing a total amount of unpaid mortgage  
 loans in the sum of at least one hundred thousand dol-  
 lars, the Industrial Commission may cause such mort-  
 gages, or such of them as it shall think proper but  
 not less than in the total amount of one hundred thou-  
 sand dollars, to be assigned, together with the obliga-  
 tions thereby secured, to the State Treasurer. The 180  
 assignment of each such mortgage and obligation shall  
 be executed by the Manager of the Bank and shall re-  
 cite that it is made to "The State Treasurer of North  
 Dakota and his successors in office in trust as security  
 for bonds to be issued by the State of North Dakota  
 under the designation of Bonds of North Dakota, Real  
 Estate Series, as provided by law"; and it shall be duly

181 recorded by said Manager in each county in which the  
lands affected by the mortgage are situated. As soon  
as such assignments are recorded, they, with the in-  
struments assigned, shall be delivered to the State  
Treasurer, and at the same time the Manager of the  
Bank shall deliver to the State Treasurer, a verified  
statement showing the amount of the loan remaining  
182 unpaid on each such obligation secured by the mor-  
gages so assigned and delivered.

SECTION 3. As soon as the State Treasurer  
shall receive said instruments, he shall notify the Gov-  
ernor, the State Auditor and the Secretary of State,  
who shall each immediately inspect them. Thereupon  
183 the State Treasurer shall immediately prepare for is-  
sue, and the Governor and the State Treasurer shall  
thereafter issue, negotiable bonds of the State \* of (34)  
North Dakota in an amount not exceeding the amount  
of the outstanding loans secured by the mortgages  
delivered to and in the possession of the State Treas-  
urer, as above provided. Each of the bonds so issued  
184 shall contain a recital that it is issued and that it is  
secured by real estate first mortgages deposited with  
the State Treasurer of North Dakota, in pursuance of  
the provisions of this Act, which may be cited as the  
"Real Estate Bond Act of North Dakota." Said bonds  
shall be executed by the Governor and the State Treas-  
urer under the great seal of the State and shall be  
attested by the Secretary of State. The Auditor and

Secretary of State shall endorse and sign on each such  
bond, when issued, a certificate showing that it is  
issued pursuant to law and it within the debt limit.  
The bonds so issued shall be designated "Bonds of  
North Dakota, Real Estate Series."

SECTION 4. The bonds so issued shall be payable to the purchaser or bearer; provided, however, that the provisions of section 151, Compiled Laws of 1913, are hereby declared to apply to them. They shall be issued in denominations of from five dollars to ten thousand dollars, and shall be payable in not less than ten or more than thirty years from the passage of this Act; provided, however, that at the option of the Industrial Commission they shall be payable at any time after five years from the date of their issue, upon public notice given by the Industrial Commission that they shall mature and become payable at a date not less than one year from the time of the giving of such public notice. They shall bear interest at a rate not exceeding six per cent per annum from their date until maturity, payable semi-annually on the first day of January and of July in each year; and coupons shall be attached to each bond, evidencing the amount of interest payable at each first day of January and July until maturity. Principal and interest shall be payable at the office of the State Treasurer in Bismarck. \* The terms of said bonds, as to values of denominations, periods of maturity and rates of in-

189 interest, shall be fixed by the commission in its sound  
judgment, within the limitations above stated. Every  
such bond and coupon must be presented for payment  
at the office of the State Treasurer within six years  
from the date of its maturity; and no such bond or  
coupon shall bear interest after maturity unless pay-  
190 ment thereof shall not be made upon due presentation  
for payment.

SECTION 5. The said issue of bonds is auth-  
orized for the purpose of making delivery thereof to  
the Industrial Commission of North Dakota, as here-  
inafter provided, to the end that the said Commission  
may, by negotiation and sale of said bonds, procure  
191 necessary funds for the Bank of North Dakota, thus  
replacing in said Bank the funds employed by it from  
time to time in making loans upon first mortgages of  
real estate.

SECTION 6. In furtherance of the purpose  
declared by this Act, it is hereby made the duty of the  
Governor and the State Treasurer after the issue, ex-  
192 ecution, sealing and attestation of said bonds, to de-  
liver them to the Industrial Commission, in such de-  
nominations and amounts, bearing interest at such  
rates, and running to such period of maturity, as may  
be required by the Commission, within the limitations  
hereinbefore stated. The Industrial Commission is  
empowered, authorized and directed, in connection  
with and in addition to its other powers and duties, to



act as the agent of the state for the negotiation, sale  
 and delivery of said bonds. It shall sell them at not  
 less than par value for cash in such manner and at  
 such times as in its sound discretion it shall deem most  
 advantageous to the interests of the State. The Com-  
 mission is hereby authorized to receive all moneys paid  
 by buyers of said bonds, upon the sale thereof, and  
 upon receipt of the purchase price to deliver to each  
 purchaser the bonds by him purchased. Upon such  
 delivery of bonds so purchased and paid for, the faith  
 and credit of \* the State of North Dakota is pledged  
 for the payment thereof, both principal and interest,  
 to the lawful holder and owner thereof upon presen-  
 tation for payment, according to law. The moneys  
 so derived and received from the sale of said bonds  
 shall be placed by the Industrial Commission in the  
 funds of the Bank. Nothing in this Act, however,  
 shall be construed to prevent the purchase of any said  
 bonds with any funds in the Bank of North Dakota.

SECTION 7. After such assignment of any  
 mortgage, and the obligation thereby secured, all pay-  
 ments accruing thereon shall be made to the State  
 Treasurer. He shall hold and use said mortgages,  
 obligations and the moneys paid thereon, in trust, first,  
 for the security and payment of the bonds to be issued  
 as herein provided, and second, for redelivery to the  
 bank of such remaining part or balance thereof as  
 may come within the provisions hereinafter stated.

197 He shall keep said moneys in a separate fund designated the "Real Estate Bond Payment Fund," apart from all other funds in his possession; and the provisions of section 7 of the Bank Act shall not apply thereto. He shall also keep in said fund, as a part thereof, for the same purpose and in the same manner and under the same conditions, all moneys received by him, whether from the proceeds of taxes, or from payments made by the Industrial Commission, or from legislative appropriation, or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of the said bonds, or interest thereon. No other disposition, by appropriation or otherwise, shall ever be made of the moneys in said funds until said bonds shall be fully paid, or until the time limit by law for the payment thereof shall have expired; provided, however, that if any of said bonds issued and delivered to the Industrial Commission, as hereinbefore provided, shall be returned to the State Treasurer, not sold, then such returned bonds shall be deemed a part of the bond issue secured by such fund.

\* SECTION 8 The State Treasurer shall pay the interest on said bonds upon presentment to him of the coupons for such interest when due and shall redeem said bonds upon their maturity by paying the principal thereof, all such payments being made from the Real Estate Bond Payment Fund, without auditor's

warrant. Each payment so made, in addition to other  
 accounting as provided by law, shall be reported to  
 the Bank of North Dakota. All moneys in said fund,  
 or as much thereof as may be necessary are hereby ap-  
 propriated for the payment of the interest and the  
 principal of said bonds, and this appropriation shall  
 not be repealed and no provision made in this Act for  
 the payment of said bonds and interest, shall be dis-  
 continued until the debt evidenced by said bonds, both  
 principal and interest shall have been paid.

SECTION 9. If the obligation secured by any  
 such mortgage so assigned to the State Treasurer shall  
 not be performed according to its terms by the mort-  
 gagor, by payment or otherwise, or if any condition  
 expressed in any such mortgage shall not be duly per-  
 formed and kept according to its terms, the State  
 Treasurer shall proceed to exercise the rights con-  
 ferred upon him as the assignee of said mortgage,  
 through the enforcements of its terms by foreclosure  
 or otherwise, for realizing upon or protecting the se-  
 curity afforded by said mortgage or for collecting the  
 amount of the obligation thereby secured. If in so  
 doing it shall become necessary for the State Treasur-  
 er to purchase the property mortgaged, he shall take  
 title thereof as State Treasurer, and as Trustee, in  
 trust for the security for payment of said bonds; and  
 if title to any such mortgaged lands shall be perfected  
 in any State Treasurer by virtue of said purchase, he

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205 shall apply to the District Court of the county in which  
such lands are situated for direction as to the further  
performance of the duties of his trust in the premi-  
ses. The cash proceeds derived from the possession,  
use \* or sale of any such lands shall become a part of (30  
the said Real Estate Bond Payment Fund.

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206 SECTION 10. If while any mortgage so as-  
signed to the State Treasurer is in his hands, the note  
or obligation thereby secured shall have been fully paid  
according to its terms, the State Treasurer shall im-  
mediately so certify to the Manager of the Bank. The  
State Treasurer shall also give information to the  
Bank as to any proceedings which he may from time  
to time take respecting the enforcement and collec-  
tion of the securities so assigned to him, not paid ac-  
cording to their terms.

208 SECTION 11. The State Treasurer shall from  
time to time, at the request of the Bank of North Da-  
kota, give information as to the amount of cash bal-  
ances in his hands credited to said Real Estate Bond  
Payment Fund. If such balances shall include funds  
received by him upon the payment of the principal  
sum loaned upon any such mortgage, the bank may,  
to the extent of such principal sums so paid, substi-  
tute therefor new mortgages by assignment thereof,  
together with the obligation thereby secured, in the  
same manner and to the same effect as in the case of  
the mortgages and obligations originally assigned as

the basis of the issue of such bonds, and upon such assignment and substitution of such new mortgages, the State Treasurer shall pay to the Bank the amount thereof, and such mortgages so substituted shall become and continue a part of the body of said trust, the same as the mortgages and obligations originally assigned to the State Treasurer therefor; provided, however, that unless the amount of the mortgages in such fund falling due before bonds secured thereby is sufficient to pay such bonds, the Treasurer shall reserve sufficient cash for that purpose.

SECTION 12. All said bonds shall be exempt from state, county and municipal taxes of any and all kinds.

\* SECTION 13. If at the time of the annual meeting of the State Board of Equalization, the moneys in the Real Estate Bond Payment Fund shall appear to the State Treasurer to be insufficient to meet the payments of interest or principal upon said bonds accruing within a period of one year thereafter, he shall so inform the State Board of Equalization, which shall thereupon proceed to include in the annual tax levy, such tax as in its judgment shall be necessary to meet the indicated deficiency, and the proceeds of such tax shall be placed by the State Treasurer in said fund.

SECTION 14. Whenever it shall appear that there are in said Real Estate Bond Payment Fund, funds which, with the mortgage securities on hand are

213 more than sufficient to provide for the payment of all  
bonds and interest thereon outstanding, the excess of  
such funds requisite for that purpose shall be paid by  
the State Treasurer to the Bank of North Dakota, if  
so directed by the Industrial Commission.

214 SECTION 15. The powers herein granted may  
be repeatedly exercised and the duties following there-  
upon shall be likewise repeatedly performed from  
time to time as occasion may arise under the terms of  
this Act; provided, however, that at no time shall the  
amount of bonds issued and outstanding pursuant to  
the terms of this Act exceed the total of ten million  
dollars.

215 SECTION 16. There is hereby appropriated  
out of the general funds of the State, not otherwise  
appropriated, ten thousand dollars or as much thereof  
as may be necessary, to carry out the provisions of  
this Act. This appropriation is hereby declared to be  
immediately available upon the passage and approval  
of this Act.

216 SECTION 17. This Act is hereby declared to  
be an emergency measure, and shall take effect and  
be in force from and after its passage and approval.

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\*MILL AND ELEVATOR ASSOCIATION ACT—  
SENATE BILL NO. 20  
AN ACT

Declaring the purpose of the State of North Dakota  
to engage in the business of manufacturing and mar-



keting of farm products, and for establishing a warehouse, elevator and flour mill system under the name of North Dakota Mill and Elevator Association operated by the State, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. That for the purpose of encouraging and promoting agriculture, commerce and industry, the State of North Dakota shall engage in the business of manufacturing and marketing farm products and for that purpose shall establish a system of warehouses, elevators, flour mills, factories, plants, machinery and equipments, owned, controlled and operated by it under the name of North Dakota Mill and Elevator Association, hereinafter for convenience called the Association.

SECTION 2. The Industrial Commission shall operate, manage, and control the Association, locate and maintain its places of business, of which the principal place shall be within the state, and shall make and enforce orders, rules, regulations and by-laws for the transaction of its business. The business of the Association, in addition to other matters herein specified, may include anything that any private individual

221 or corporation may lawfully do in conducting a similar  
 222 business except as herein restricted. The Industrial  
 Commission shall meet within twenty days after  
 the passage and approval of this Act to begin the or-  
 ganization of the Association.

SECTION 3. To accomplish the purposes of  
 223 this act, the Industrial Commission shall acquire by  
 purchase, lease, or by exercise of right of eminent  
 domain, as provided by Chapter 36 \* of the Code of (4)  
 Civil Procedure, Compiled Laws of 1913, all neces-  
 sary property or property rights, and may construct,  
 remodel or repair all necessary buildings; and may  
 224 purchase, lease, construct, or otherwise acquire, ware-  
 225 houses, elevators, flour mills, factories, offices, plants,  
 machinery, equipments, and all other things necessary,  
 incidental or convenient in the manufacturing and mar-  
 keting of all kinds of raw and finished farm products  
 within or without the state and may dispose of the  
 same; and may buy, manufacture, store, mortgage,  
 pledge, sell, exchange or otherwise acquire or dispose  
 of all kinds of manufactured and raw farm and food  
 products and by-products, and may for such purposes  
 establish and operate exchanges, bureaus, markets and  
 agencies, within or without the State, including for-  
 eign countries, on such terms and conditions, and  
 under such rules and regulations as the Commission  
 may determine.

SECTION 4. The Industrial Commission shall

obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the Association. To that end it shall appoint a manager, and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such manager its general agent in respect to the functions of the association, but subject, nevertheless, in such agency, to the supervisions, limitation and control of the Commission. It shall employ such contractors, architects, builders, attorneys, clerks, accountants, and other experts, agents and servants as in the judgment of the Commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the Commission, the Manager of the Association shall appoint and employ such deputies and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants as he shall, in his judgment, deem are required \* by the interests of the Association. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the Association, shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employees of the Association engaged upon its financial functions shall, before

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229 entering upon their duties, respectively furnish good  
and sufficient bonds to the state in such amount and  
upon such conditions as the commission may require  
and approve; but the bond of the Manager shall not  
be less than fifty thousand dollars. Such bonds shall  
be filed with the Secretary of State.

230 SECTION 5. The Industrial Commission may  
remove and discharge any and all persons appointed  
in the exercise of the powers granted by this Act,  
whether by the Commission or by the Manager of the  
association, and any such removal may be made when-  
ever in the judgment of the Commission the public  
interests require it; provided, however, that all ap-  
231 pointments and removals contemplated by this Act  
shall be so made as the Commission shall deem most  
fit to promote the efficiency of the public service.

232 SECTION 6. The Industrial Commission shall  
fix the buying price of all things bought, and the sell-  
ing price of all things sold, incidental to the operation  
of the Association, and shall fix all charges for any  
and all services rendered by the Association; but in  
fixing these prices—while all services are to be ren-  
dered as near as may be at cost—there shall be taken  
into consideration in addition to other necessary costs,  
a reasonable charge for depreciation of all property,  
all overhead expenses and a reasonable surplus, to-  
gether with all amounts required for the repayment,  
with interest, of funds received from the State.

## SECTION 7. All business of the Association

may be conducted under the name of "North Dakota  
 (43) Mill and Elevator Association." \* Title to property  
 pertaining to the operation of the Association may be  
 obtained and conveyed in the name of "The State of  
 North Dakota, doing business as the North Dakota  
 Mill and Elevator Association." Written instruments  
 shall be executed in the name of the State of North  
 Dakota, signed by any two members of the Industrial  
 Commission, of whom the Governor shall be one, or  
 by the manager of the Association, within the scope  
 of his authority so to do as defined by the Industrial  
 Commission.

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SECTION 8. Civil actions may be brought  
 against the State of North Dakota on account of  
 causes of action claimed to have arisen out of trans-  
 actions connected with the operation of the association  
 upon condition that the provisions of this section are  
 complied with. In such actions the State shall be  
 designated as "The State of North Dakota, doing busi-  
 ness as North Dakota Mill and Elevator Associa-  
 tion," and the service of process therein shall be made  
 upon the manager of the association. Such actions  
 may be brought in the same manner and shall be sub-  
 ject to the same provisions of law as other civil actions  
 brought pursuant to the provisions of the Code of  
 Civil Procedure. Such actions shall be brought, how-  
 ever, in the county where the Association shall have

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237 its principal place of business, except as provided in Sections 7405, 7416 and 7418, Compiled Laws of North Dakota, 1913. The provisions of sections 375 and 657 of the Compiled Laws of 1913 shall not apply to claims against the State, affected by the provisions of this section.

238 SECTION 9. There is hereby appropriated, to carry out the purposes of this act, all moneys raised by the mill tax for terminal elevators as provided in sections 2072 and 2073 of the Compiled Laws of 1913. Said moneys shall be paid to the Manager of said Association, and he shall place the said moneys in the general funds of the Association. Said money, to-  
239 gether with any funds that shall be procured by the Industrial Commission through the sale of state bonds, as may be provided by law for that purpose, shall be designated as the capital of the Association.

\* SECTION 10. The State Examiner shall per- (44  
sonally or through deputy examiners visit the Associa-  
240 tion at least twice annually, and shall inspect and ver-  
ify the assets in its possession and under its control,  
with sufficient thoroughness of investigation to ascer-  
tain with reasonable certainty whether the valuations  
are correctly carried on its books. He shall report  
the results of such examination and investigation to  
the Industrial Commission as soon as practicable, and  
to the Legislative Assembly at its next ensuing ses-  
sion.



SECTION 11. This Act is hereby declared to  
 be an emergency measure, and shall take effect and  
 be in force from and after its passage and approval.

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MILL AND ELEVATOR ASSOCIATION BOND  
 ACT—SENATE BILL NO. 75

AN ACT

Providing for the issuing of bonds of the State of  
 North Dakota in a sum not exceeding Five Million  
 Dollars to be known as "Bonds of North Dakota,  
 Mill and Elevator Series"; prescribing the terms and  
 stating the purposes thereof; providing for a tax and  
 making other provisions for the payment thereof;  
 making appropriations and other provisions for the  
 payment of interest and principal of said bonds and  
 to carry into effect the provisions of this Act; and  
 declaring this Act to be an emergency measure.

BE IT ENACTED BY THE LEGISLATIVE  
 ASSEMBLY OF THE STATE OF NORTH  
 DAKOTA:

SECTION 1. The issuance of bonds of the  
 State of North Dakota, to be known as "Bonds of  
 North Dakota, Mill and Elevator Series," is hereby  
 authorized and directed, under the conditions and in  
 the manner and for the purposes hereinafter set forth.

SECTION 2. Whenever the Industrial Com-  
 mission shall deem it expedient so to do, for the pur-  
 pose of authorizing the issuance of bonds of the State

245 of North Dakota as contemplated by this \* Act, it shall (1  
cause mortgages to be executed in the manner prescribed by Section 7 of the Act entitled "An Act declaring the purpose of the State of North Dakota to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator and flour mill system under the name  
246 of North Dakota Mill and Elevator Association operated by the State, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor," enacted in the year 1919 by the Sixteenth Session of the Legislative Assembly  
247 of North Dakota, being Senate Bill No. 20. The grantee and mortgagee designated in said mortgages shall be "The State Treasurer of North Dakota and his successors in office in trust." Each mortgage shall be executed and delivered to the Treasurer of North Dakota and his successors in office, in trust as security for bonds to be issued by the State of North Dakota  
248 under the designation of "Bonds of North Dakota, Mill and Elevator Series," as provided by law, and shall contain a recital to that effect. The property described in and covered by said mortgages shall be such property as is owned by or may be acquired for the State of North Dakota, doing business as North Dakota Mill and Elevator Association, and dedicated to or acquired for the use thereof by the Industrial

Commission. All property dedicated to or acquired 249  
 for the State of North Dakota doing business as North  
 Dakota Mill and Elevator Association shall be de-  
 scribed in and covered by first mortgages so that at  
 all times all of the property of the State of North  
 Dakota doing business as North Dakota Mill and  
 Elevator Association shall be pledged to the payment 250  
 of all of the bonds issued, sold, and delivered under  
 the provisions of this Act and attached to each of said  
 mortgages, and incorporated by reference into the pro-  
 visions thereof, shall be an itemized statement of all  
 (46) of the property specified and covered therein, \* show-  
 ing the true value of each item thereof based upon  
 appraisal made under the direction of the Industrial 251  
 Commission and verified by the oath of the appraisers.  
 Said mortgages shall be a first lien upon all of said  
 property without prior lien or incumbrance of any  
 kind whatsoever.

SECTION 3. Said mortgages shall be duly re-  
 corded in each county in which the property affected  
 thereby is situated. As soon as such mortgages are 252  
 recorded they shall be delivered to the State Treas-  
 urer, and be retained by the State Treasurer and his  
 successors in office in trust until all of the bonds se-  
 cured thereby as provided by this Act shall be paid.

SECTION 4. As soon as the State Treasurer  
 shall receive such mortgages so recorded he shall noti-  
 fy the Governor, the State Auditor and the Secretary

253 of State, who shall thereupon immediately inspect  
them, and upon ascertaining from such examination  
and inspection that said mortgages have been properly  
executed and duly recorded, it shall be the duty of the  
State Treasurer to immediately prepare for issue, and  
the Governor and State Treasurer shall thereafter is-  
254 sue, negotiable bonds of the State of North Dakota  
in an amount not exceeding the value of the property  
included within the terms of said mortgages as ex-  
pressed in the itemized statements and valuation at-  
tached to said mortgages, as provided in Section 2 of  
this Act. Each of the bonds so issued shall contain a  
recital that it is secured by first mortgages deposited  
255 with the State Treasurer of North Dakota upon prop-  
erty of the State, dedicated to the use of the North  
Dakota Mill and Elevator Association; that it is issued  
in pursuance of the provisions of this Act, which may  
be cited as the "Mill and Elevator Bond Act of North  
Dakota." Said bonds shall be executed by the Gov-  
ernor and the State Treasurer under the great seal  
256 of the State, and shall be attested by the Secretary of  
State. The Auditor and Secretary of State shall en-  
dorse and sign on each such bond, when issued, a  
certificate showing that it has \* been issued pursuant to (4)  
law and is within the debt limit. The bonds so issued  
shall be designated "Bonds of North Dakota, Mill and  
Elevator Series," and may be issued in series from  
time to time as the Industrial Commission may by  
order designate and require.

SECTION 5. The bonds so issued shall be payable to the purchaser or bearer; provided, however, that the provisions of Section 151, Compiled Laws of 1913, are hereby declared to apply to them. They shall be issued in denominations of from five dollars to ten thousand dollars, and shall be payable in not less than ten or more than thirty years from the passage of this Act. They shall bear interest at a rate not exceeding six per cent per annum from their date until maturity, payable semi-annually on the first day of January and of July in each year; and coupons shall be attached to each bond, evidencing the amount of interest payable at each first day of January and July until maturity. Principal and interest shall be payable at the office of the State Treasurer in Bismarck. The terms of said bonds, as to values or denominations, and rates of interest, shall be fixed by the Commission in its sound judgment, within the limitations above stated. Every such bond and coupon must be presented for payment at the office of the State Treasurer within six years from the date of its maturity; and no such bond or coupon shall bear interest after maturity unless payment thereof shall not be made upon due presentation for payment.

SECTION 6. The said bonds so issued shall be delivered to the Industrial Commission of North Dakota to the end that the said Commission may by negotiation and sale of said bonds procure necessary funds for the operation of said association.

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SECTION 7. In furtherance of the purpose declared by this Act, it is hereby made the duty of the Governor and the State Treasurer after the issue, execution, sealing and attestation \* of said bonds to deliver them to the Industrial Commission, in such denominations and amounts, bearing interest at such rates, and running to such period of maturity, as may be required by the Commission, within the limitations herein stated. The Industrial Commission is empowered, authorized and directed in connection with and in addition to its other powers and duties, to act as the agent of the state for the negotiation, sale and delivery of said bonds. It shall sell them for cash at not less than par value in such manner and at such times in its sound discretion it shall deem most advantageous to the interests of the state. The Commission is hereby authorized to receive all moneys paid by buyers of said bonds, upon the sale thereof, and upon receipt of the purchase price to deliver to each purchaser the bonds by him purchased. Upon such delivery of bonds so purchased and paid for, the faith and credit of the State of North Dakota is pledged for the payment thereof, both principal and interest, to the lawful holder and owner thereof upon presentation for payment, according to law. The moneys so derived and received from the sale of said bonds shall be placed by the Industrial Commission in the funds of the Association. Nothing in this Act, how-



ever, shall be construed to prevent the purchase of  
any said bonds with any funds in the Bank of North  
Dakota. 265

SECTION 8. The State Treasurer and his successors in office shall hold such mortgages, first, for the security and payment of the bonds issued as provided in this Act, and second for the satisfaction and cancellation thereof, and re-delivery to the Industrial Commission, if and when said bonds have been fully paid. 266

SECTION 9. From time to time the Industrial Commission shall, out of the earnings derived from the operation of the Association, pay to the State Treasurer such moneys as the Commission shall deem available to devote to the purpose of paying said bonds and interest. In making such payment the \* Commission shall file a statement with the State Treasurer specifying the purpose of such payment. When moneys shall have been so paid to the State Treasurer, he shall apply the same to their specified purpose as hereinafter directed. 267

SECTION 10. At the time of each annual meeting of the State Board of Equalization hereafter, the Industrial Commission shall deliver to said Board an exact written statement of all bonds issued under the provisions of this Act outstanding at that time, including therein the dates of maturity, interest rates and all other information proper to enable the board 268

269 intelligently to comply with the provisions of this act  
in regard to tax levies. On the basis of such infor-  
mation, the State Board of Equalization shall annual-  
ly levy a tax, at the time other taxes are levied, suf-  
ficient in amount to pay such interest on said bonds  
as will become due during the year beginning on the  
270 next ensuing first day of January, and said tax shall  
be collected in the same manner as other state taxes  
are collected. In determining, however, the amount  
of the tax sufficient for such purpose the Board of  
Equalization shall take into account whatever moneys,  
if any, shall then have been paid to the State Treas-  
urer by the Industrial Commission, as provided in this  
271 Act, for the specific purpose of paying such interest.  
The Board of Equalization shall apply to the State  
Treasurer for information as to the amount of such  
moneys, and he shall forthwith supply the informa-  
tion requested. If the amount of such moneys shall  
equal or exceed the amount of the interest on said  
bonds payable during said year beginning on the next  
272 ensuing first day of January, then no tax shall be  
levied by the Board of Equalization for that purpose;  
but if the amount of such moneys shall be less than  
the amount of the interest on said bonds payable dur-  
ing said year, then the Board of Equalization shall  
deduct the amount of said moneys in the possession  
of the treasurer \* from the amount of the interest so (50)  
payable, and shall levy the tax hereinbefore in this

section provided for at least the difference between  
said amounts. 273

SECTION 11. Whenever it shall appear to the Board of Equalization from the information contained in any statement delivered to it by the Industrial Commission at an annual meeting of said Board, as provided in Section 10 above that there will mature, within a period of five years from such annual meeting, any of the bonds provided for in this Act, the Board of Equalization shall thereupon, at such annual meeting, levy a tax in an amount equal to one-fifth of the amount of the principal of such bonds; provided, however, that in determining the amount of such tax, the Board of Equalization shall take into account whatever moneys, if any, shall have been paid to the State Treasurer by the Industrial Commission for the specific purpose of paying the principal of said bonds when due, as provided in Section 9 of this Act. The Board of Equalization shall apply to the State Treasurer for information as to the amount of such moneys and as to the times when paid to him. If the amount of such moneys paid to the Treasurer since the date of the last preceding tax levy made by the Board of Equalization shall equal or exceed one-fifth of the amount of the bonds so to mature, then such tax shall not be levied; but if the amount of such moneys, paid to the State Treasurer since the date of the last preceding tax levy, shall be less than one-fifth of the 274 275 276

277 amount of said bonds so to mature, then the Board of  
 Equalization shall deduct the amount of such moneys,  
 so paid, from such one-fifth of said bonds, and shall  
 levy the tax, hereinbefore in this section provided, for  
 the difference. It is the intention of this section to  
 provide that in each of the last five years, before the  
 maturity of any of said bonds, a state tax shall be  
 278 levied which, together with such moneys as shall dur-  
 ing the next preceding year have been paid to the  
 State Treasurer by the Industrial Commission for the  
 \* purpose, shall be at least sufficient to pay one-fifth (51)  
 part of the principal of said bonds.

SECTION 12. To identify and distinguish the  
 279 funds provided and available for the payment of the  
 bonds issued pursuant to this Act, there is hereby  
 created and established as a part of the moneys of the  
 state received and kept by the State Treasurer, a fund  
 to be designated the "Mill and Elevator Bond Pay-  
 ment Fund." All moneys received by the State Treas-  
 urer whether from the proceeds of taxes, or from  
 280 payments made by the Industrial Commission, or from  
 legislative appropriation, or otherwise, which shall be  
 by law or by other authoritative designation made ap-  
 plicable to the payment of the said bonds, or interest  
 thereon, shall be by him kept in said fund distinct  
 from all other moneys, and shall be disbursed by him  
 only for the particular purpose or purposes for which  
 such moneys shall be delivered to him; and no other

appropriation shall ever be made of the moneys in said fund until the said bonds shall be fully paid. But this act shall not be construed as preventing the State Treasurer from depositing said funds in the Bank of North Dakota, as provided by law with respect to all public funds. 281

SECTION 13. There is hereby appropriated, all of the moneys obtained as proceeds of the taxes provided for in sections 10 and 11 above, and all moneys paid to the State Treasurer by the Industrial Commission as specified in Section 9 above, and all moneys constituting the Mill and Elevator Bond Payment Fund, or so much thereof as may be from time to time necessary, to pay the interest and principal upon the said bonds as payments thereon shall become due; and whenever any of said bonds, or any coupons thereon, being due, shall be presented for payment, the State Treasurer shall pay the same out of the fund applicable thereto. If for any reason the said fund shall, for the time being, be insufficient, the Treasurer shall supply \* the deficiency out of any other available moneys of the state in his custody; but in that case he shall as soon as possible, out of the Mill and Elevator Bond Payment Fund, return the amount of such deficiency to the source whence taken. 282 283 284

SECTION 14. The State Treasurer shall pay the interest on said bonds upon presentation to him of the coupons for such interest when due, and shall re-

285 deem said bonds upon their maturity by paying the  
principal thereof, all such payments being made from  
the Mill and Elevator Bond Payment Fund, without  
auditor's warrant. Each payment so made, in addi-  
286 tion to other accounting as provided by law, shall be  
reported to the said Association. All moneys in said  
fund, or as much thereof as may be necessary, are  
hereby appropriated for the payment of the interest  
and the principal of said bonds, and this appropria-  
tion shall not be repealed, and no provisions made in  
this Act for the payment of said bonds and interest  
shall be discontinued until the debt evidenced by said  
bonds, both principal and interest, shall have been paid.

287 SECTION 15. The powers herein granted may  
be repeatedly exercised and the duties following there-  
upon shall be likewise repeatedly performed from time  
to time as occasion may arise under the terms of this  
act; provided, however, that at no time shall the  
amount of bonds issued and outstanding pursuant to  
the terms of this act, exceed the total of Five Million  
288 Dollars.

SECTION 16. All said bonds shall be exempt  
from state, county and municipal taxes of any and all  
kinds.

SECTION 17. There is hereby appropriated  
out of the general funds of the state, not otherwise  
appropriated, ten thousand dollars, or as much thereof  
as may be necessary, to carry out the provisions of this



Act. This appropriation is hereby declared to be immediately available upon the passage and approval of this Act. 288

- 3) \* SECTION 18. This Act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

## HOME BUILDING ACT—SENATE BILL NO 19. 290

### AN ACT

Declaring the purpose of the State of North Dakota to engage in the enterprise of providing homes for residents of this state and to that end to establish a business system operated by the State under the name of The Home Building Association of North Dakota, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; and making an appropriation therefor. 291

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA: 292

SECTION 1. For the purpose of promoting home building and ownership, the State of North Dakota shall engage in the enterprise of providing homes for residents of the State, and to that end it shall and does hereby, establish a business system operated by the State under the name of The Home Building Association of North Dakota, hereinafter for convenience called the Association.

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SECTION 2. The Industrial Commission of North Dakota shall operate, manage and control the Association and shall locate and maintain its places of business, of which the principal place shall be within the State, and shall make and enforce orders, rules, regulations and by-laws for the transaction of its business.

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SECTION 3. To accomplish the purposes of this Act the Industrial Commission shall acquire by purchase, lease or exercise of the right of eminent domain, as provided by Chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all requisite property and property rights, and may construct, re-

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\* pair and remodel buildings, having strict regard for (34) economy in the administration of its affairs.

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SECTION 4. The Industrial Commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the Association. To that end it shall appoint a Manager, and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such Manager its general agent, in respect to the functions of the Association, but subject, nevertheless, in such agency, to the supervision, limitation and control of the Commission. It shall employ such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants as in the judgment of the Commission the interest of the

State may require, and shall define the duties, designate the title, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the Commission, the Manager of the Association shall appoint and employ such deputies and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants, as he shall in his judgment, deem are required by the interest of the Association. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the association shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employees of the Association engaged upon its financial functions shall, before entering upon their duties, respectively furnish good and sufficient bonds to the State in such amount and upon such conditions as the Commission may require and approve; but the bond of the Manager shall not be less than fifty thousand dollars. Such bonds shall be filed with the Secretary of State.

SECTION 5. The Industrial Commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this act, whether by the Commission or by the \* Manager of the Association, and any such removal may be made whenever in the judgment of the Commission the public

101 interests require it; provided, however, that all ap-  
 102 pointments and removals contemplated by this Act  
 shall be so made as the Commission shall deem most  
 fit to promote the efficiency of the public service.

SECTION 6. Whenever funds shall be avail-  
 able, derived from the sale of bonds issued by the  
 State and delivered to the Industrial Commission for  
 103 negotiation to carry on the business of the Associa-  
 tion; or derived from appropriations made by the  
 Legislative Assembly for such purpose; or derived  
 from deposits received by the Association as herein-  
 after provided, or derived from payments made for  
 homes by purchasers thereof, such funds shall be used,  
 104 under proper regulations of the Industrial Commis-  
 sion, for investment in building or purchasing homes  
 within the State for members of the Home Buyers'  
 League, as such Leagues are hereinafter defined. No  
 home shall be built, or purchased and sold, at a price  
 to exceed five thousand dollars, except in case of a  
 farm home, in which case the selling price shall not  
 exceed ten thousand dollars. The word "home" as  
 105 herein used, shall mean a dwelling house, within or  
 adjacent to a town, village or city, together with such  
 equipments as are customarily used in connection with  
 a dwelling house. The words "farm home" as herein  
 used, shall mean a tract of agricultural land together  
 with a dwelling house, a barn, and such other farm  
 buildings and equipments as are customarily used in  
 connection with a farm home.

SECTION 7. The Association shall make a specialty of building standardized houses, barns and other buildings and equipments provided for herein. For its uses the Industrial Commission may acquire suitable tracts of land, by purchase or by exercise of the right of eminent domain, deemed by the Commission suitable to accomplish the purposes of this Act; and may subdivide such land into lots, and lay out streets, \* sidewalks, parks and gardens therein, and build homes on said lots, as provided for herein, and supply them with water, light and heat.

SECTION 8. Any person may open a home buying account with the Association by applying in person, by mail or through a Home Buyers' League, a trade union, a woman's club or any other recognized industrial, social or civic body. Special efforts shall be made to secure deposits from children, young people, renters and wage earners in order that more people may own their own homes. Any such deposits, together with interest, may be withdrawn upon six months' notice.

SECTION 9. The Industrial Commission shall fix the rate of interest on all deposits and loans, and the charges for all services rendered by the Association, but no interest rate allowed or received shall exceed six per cent per annum.

SECTION 10. Ten or more depositors in the Association may form themselves into a local body to

309 be known as a Home Buyers' League. Every such  
 Home Buyers' League must be authorized, registered  
 and numbered in the office of the Association and it  
 shall be governed by such rules and regulations as may  
 be prescribed by the Industrial Commission. No per-  
 son shall become a member of a Home Buyers' Lea-  
 310 gue without the written consent of all the other mem-  
 bers, which shall be filed and recorded in the office  
 of the Association.

SECTION 11. Each Home Buyers' League  
 shall elect a secretary-treasurer who shall perform the  
 duties usual to such office, and shall be its executive  
 officer. He shall also be the agent of the Association  
 311 and shall perform such other duties as the Industrial  
 Commission may prescribe.

SECTION 12. Whenever a member of a Home  
 Buyers' League shall have deposited with the Asso-  
 ciation a sum equal to twenty per cent of the total  
 selling price of a home or farm home, the Association  
 shall, upon his application purchase or build such  
 312 home or farm home and convey it to him upon a cash  
 payment of twenty per cent, the balance to be secured  
 by a purchase money \* mortgage on the property, and (57)  
 to be paid on an amortization plan by means of a fixed  
 number of monthly installments sufficient to cover, first,  
 a charge on the loan at a rate to be determined by the  
 Industrial Commission, second, a charge for admin-  
 istration and surplus at a rate not exceeding one per



cent per annum on the unpaid principal, said two rates  
 combined constituting the interest rate on the deferred payments; and, third, such amounts to be applied  
 on the principal as will extinguish the debt within an  
 agreed period, not less than ten or more than twenty  
 years. Additional payments in sums of twenty-five  
 dollars or any multiple thereof, for the reduction of  
 the amount of the unpaid principal, or the payment of  
 the entire principal, may be made on any regular installment date, under the rules and regulations of the  
 Industrial Commission. In case of any accident, crop  
 failure, or other event which reduces the buyers' reasonable income by one half, all payments under such  
 contract may in the discretion of the Industrial Commission, be extended from time to time for a period  
 of one year; provided, however, that on the payment  
 of all installments such further annual payment shall  
 be payable as will pay the interest with interest thereon, for the years for which no payments were made.

SECTION 13. Each member of every Home  
 Buyers' League shall be jointly and severally liable  
 for all contracts, debts, and obligations due the Association from his League, to the extent of fifteen per  
 cent of the price at which his home was sold to him.

SECTION 14. All funds of the Association  
 shall be deposited in the Bank of North Dakota, and  
 disbursed through it.

SECTION 15. All business of the Association

317 may be conducted under the name of "The Home  
 Building Association of North Dakota." Title to  
 property pertaining to the operation of the Association  
 shall be obtained and conveyed in the name of "The  
 State of North Dakota, doing business as the Home  
 Building Association of North Dakota." Written in-  
 struments \* shall be executed in the name of the State (50)  
 318 of North Dakota, signed by any two members of the  
 Industrial Commission, of whom the Governor shall  
 be one, or by the Manager of the Association within  
 the scope of his authority so to do as defined by the  
 Industrial Commission.

SECTION 16. Civil actions may be brought  
 319 against the State of North Dakota on account of  
 causes of action claimed to have arisen out of trans-  
 actions connected with the operation of the Associa-  
 tion upon condition that the provisions of this Sec-  
 tion are complied with. In such actions the State shall  
 be designated as "The State of North Dakota, doing  
 business as the Home Building Association," and the  
 320 service of process therein shall be made upon the man-  
 ager of the Association. Such actions may be brought  
 in the same manner and shall be subject to the same  
 provisions of law as other civil actions brought pur-  
 suant to the provisions of the Code of Civil Proce-  
 dure. Such actions shall be brought, however, in the  
 county where the Association shall have its principal  
 place of business, except as provided in sections 7415.

7416 and 7418, Compiled Laws of North Dakota, 321  
 1913. The provisions of Section 375 and 657 of the  
 Compiled Laws of 1913 shall not apply to claims  
 against the State affected by the provisions of this  
 Section.

SECTION 17. The State Examiner shall per-  
 sonally or through deputy examiner visit the Asso- 322  
 ciation at least twice annually, and shall inspect and  
 verify the assets in its possession and under its con-  
 trol, with sufficient thoroughness of investigation to  
 ascertain with reasonable certainty whether the valua-  
 tions are correctly carried on its books. He shall re-  
 port the results of such examination and investigation  
 to the Industrial Commission as soon as practicable, 323  
 and to the Legislative Assembly at its next ensuing  
 session.

SECTION 18. There is hereby appropriated  
 out of the General Funds of the State, not otherwise  
 appropriated, one hundred thousand dollars, or so  
 much thereof as may be necessary, to carry out the  
 provisions of this act. This appropriation \* is hereby 324  
 made available immediately upon the passage and ap-  
 proval of this act. The Industrial Commission shall,  
 out of the earnings of the Association make provision  
 for accumulating a fund with which to replace in the  
 general funds of the State, the amount received by the  
 Commission under this appropriation, as may be di-  
 rected by the Legislative Assembly.

That the amendments to sections 182 and 185 of the Constitution, hereinbefore set out, and the acts of the legislature set out in the preceding paragraph, purport and pretend to authorize the State of North Dakota to enter into private industries, enterprises, and business projects, such as general banking, buying, selling and handling grain, owning and operating elevators and flour mills, home building, and general real estate loan business, general merchandising, and other business of every character and description.

### XIX.

That the defendants, Lynn J. Frazier, William Langer, and John N. Hagan, officers of the State of North Dakota as aforesaid, claiming to act under the provisions and authority of the said constitutional amendments and the Industrial Commission Act, hereinbefore set forth, have organized as, and now claim to be a lawfully organized body under the name of "The Industrial Commission of North Dakota." That said Commission and said persons acting and claiming to act as such Industrial Commission as aforesaid, unless enjoined and restrained by order and judgment of this court, will expend large sums of money of the State of North Dakota, being funds and moneys raised by taxation against the people and property of the State of North Dakota, to-wit: in excess of the sum of \$400,000.00 and that such expenditures have already

commenced and will continue until the appropriations available therefor have been expended. That such expenditures generally will be made on account of and for the following purposes:

That said Commission and the members thereof as aforesaid, have employed a secretary of the said commission at a salary of \$3600. per annum, and are threatening to, and will engage in and undertake all of the different enterprises and business projects specially provided for under the said acts of the legislature hereinbefore set forth, and have commenced the (61) \* organization of the said special businesses so referred to in the acts of the legislature hereinbefore set forth, and will expend the full amount of the appropriation provided in said Industrial Commission Act, to-wit, more than the sum of \$200,000.00.

That the said Industrial Commission and the members thereof as aforesaid, have begun proceedings for the organization and development of the Bank of North Dakota, as provided for in the Bank of North Dakota Act, as hereinbefore set forth, and have employed a bank expert to assist in the further work of the organization and operation of said bank, at a salary of \$5000. per annum, and unless restrained and enjoined by this court, will continue in the establishment and operation of said bank without interruption until the full sum of the appropriation provided for in said act, to-wit, \$100,000.00, is fully expended.

333 That the said Industrial Commission and the  
members thereof as aforesaid, unless restrained and  
enjoined therefrom by the order and judgment of this  
Court, will proceed immediately to carry out the pro-  
visions of the Bank of North Dakota Bond Act, as  
hereinbefore set forth, and in so carrying out said  
334 provisions, will expend the full sum of the appropria-  
tion provided for in said Act, to-wit, the sum of  
\$10,000.00.

335 That the said Industrial Commission and the  
members thereof as aforesaid, unless restrained and  
enjoined therefrom by the order and judgment of this  
Court, will proceed immediately to carry out the pro-  
visions of the Bank of North Dakota Real Estate Bond  
Act, as hereinbefore set forth, and in so carrying out  
said provisions, will expend the full sum of the ap-  
propriation provided for in said Act, to-wit, the sum of  
\$10,000.00

336 That the said Industrial Commission and the  
members thereof as aforesaid, unless restrained and  
enjoined therefrom by the order and judgment of this  
Court, will proceed \* to establish a system of ware- (62)  
houses, elevators, flour mills, factories, plants, etc.,  
within and without the State of North Dakota, and  
will employ managers, agents and others in the opera-  
tion and carrying on of said warehouses, elevators,  
flour mills, factories, etc., at great expense to the State  
of North Dakota, and will acquire property within the



State of North Dakota for the purpose of establishing such enterprises as aforesaid, and as described and set forth in the Mill and Elevator Association Act as hereinbefore recited, by purchase or by virtue of the law of eminent domain, and at great expense to the State of North Dakota, and will enter upon the business of manufacture, storage, sale, exchange, and other methods of acquiring and disposing of all kinds of manufactured and raw farm and food products and by-products, and will do all other acts and things authorized or attempted to be authorized in and by the provisions of said Mill and Elevator Association Act, and in the doing thereof, will expend the full amount of the appropriation provided for in said Act, which said appropriation amounts to the sum of more than \$100,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this Court, will proceed immediately to carry out the provisions of, the North Dakota Mill and Elevator Association Bond Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to-wit: the sum of \$10,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this

186  
341 Court, will proceed immediately to carry out the provisions of the Home Building Act, as hereinbefore set forth, and in so carrying out said \* provisions, will ex- (63)  
pend the full sum of the appropriation provided for in said Act, to-wit: the sum of \$100,000.00.

342 That if the defendants herein named are permitted to use the public funds of the State of North Dakota as threatened and herein set forth, a deficit of public moneys and funds required for the purpose of meeting the expenses of the state government will be created, amounting to the sum of the appropriations aforesaid, to-wit: \$400,000.00, and that in the event of such deficit, the same would have to be restored  
343 by taxation upon the property of the plaintiffs and the other taxpayers of the State.

## XX.

344 That unless enjoined and restrained by the order and judgment of this court, the said defendant Obert Olson as State Treasurer aforesaid, will immediately prepare for issue, and the said Lynn J. Frazier as Governor aforesaid, and the said Obert Olson as State Treasurer aforesaid, will execute and issue negotiable bonds of the State of North Dakota in the aggregate amount of two million dollars under the pretended authority of the Bank of North Dakota Bond Act, as hereinbefore set forth, and Thomas Hall, secretary of State will attest the same, and with Carl Kozitsky, State Auditor, will certify to said bonds so executed,

as provided in said Bank of North Dakota Bond Act, 345  
 which said bonds are and will be known and designated as Bonds of North Dakota, Bank Series, and thereupon said bonds will be delivered to the Industrial Commission hereinbefore referred to, and will be by said Commission and the members thereof as hereinbefore designated and referred to, negotiated and sold, thereby creating a liability against the State 346  
 of North Dakota in the sum of two million dollars, which said liability can only be met and liquidated by moneys raised by taxation against the people and property of the State of North Dakota, and which moneys thus raised and said liability thus created will be for a private business enterprise, and contrary to, and in \* violation of the rights of these plaintiffs and all 347  
 other taxpayers in the State of North Dakota, and in violation of the fundamental principles of a republican form of government and the Constitution of the United States.

That the said defendants above named, and in this paragraph referred to, unless enjoined and restrained 348  
 by the order and judgment of this court, will in the same manner as herein set forth, execute, issue, attest and certify bonds of the State of North Dakota under the provisions of the Bank of North Dakota Real Estate Bond Act hereinbefore set forth, in the aggregate amount of ten million dollars, to be known as Bonds of North Dakota, Real Estate Series, and there-

349 upon said bonds will be delivered to the Industrial  
Commission hereinbefore referred to, and will be by  
said Commission and the members thereof as herein-  
before designated and referred to, negotiated and sold.

350 That the said defendants above named, and in this  
paragraph referred to, unless enjoined and restrained  
by the order and judgment of this court, will in the  
same manner as herein set forth, execute, issue, attest  
and certify bonds of the State of North Dakota under  
the provisions of the Mill and Elevator Association  
Bond Act hereinbefore set forth, in the aggregate  
amount of five million dollars, to be known as Bonds  
of North Dakota, Mill and Elevator Series, and there-  
351 upon said bonds will be delivered to the Industrial  
Commission hereinbefore referred to, and will be by  
said Commission and the members thereof as herein-  
before designated and referred to, negotiated and sold.

352 That the bonds aforesaid will constitute a liability  
against the State of North Dakota in the aggregate  
sum of Seventeen Million Dollars, which said liability  
can only be met and liquidated by moneys raised by  
taxation against the people and property of the State  
of North Dakota, and which moneys thus raised, and  
said liability thus created, \* will be for private business (65)  
enterprises, and in violation of the rights of these  
plaintiffs and all other taxpayers of the State of North  
Dakota, and of the fundamental principles of a repub-  
lican form of government and the Constitution of the  
United States.

That the bonds authorized by the acts of the Sixteenth Legislative Assembly, referred to herein, would be invalid, for the following reasons:

(a) Because issued for private business, and not for public purposes;

(b) For the reason that they would violate the constitution of the State of North Dakota in this: That no sufficient provision is made in said acts for a sinking fund to meet and pay the principal of the bonds to be issued under said acts, as required by Section 182 of the state constitution;

(c) For the reason that the legislature did not exercise its function of fixing the amounts, denominations, maturities and rate of interest on said bonds, but on the contrary attempted to delegate the legislative function of fixing and determining the same to the discretion of the Governor and the Industrial Commission.

\* XXII.

That the purpose of the proposed expenditure of public funds and the creation of public debts of which these plaintiffs complain, is not a public or a governmental purpose, but is a private or business purpose, and is for the purpose of financial profit and gain for those who are interested in the various industries and enterprises and business projects proposed to be installed. That such enterprises do not rest upon the



357 public health or welfare of the people of the State, or  
any other governmental reason which would justify  
the proposed expenditures or the creation of the pro-  
posed debts or in any manner come within the taxing  
or police power of the State. That no condition exists  
in the State of North Dakota which will authorize or  
358 justify the State, in the exercise of its legitimate func-  
tions of government, in engaging in the various lines  
of private business contemplated as aforesaid, under  
the said constitutional amendments and acts of the  
legislature, or in making the proposed expenditures or  
incurring the proposed debts. That the facilities now  
provided for supplying the people of the State of  
359 North Dakota with the necessities and luxuries of life,  
and conveniences and requirements for their comfort,  
welfare and health, are adequate.

North Dakota has an area of 79,837 square miles,  
and a population, according to the war census, of 664,-  
625. It has 53 counties, each of which is served by  
one or more of six railroads, whose total mileage, in-  
360 cluding main line and branch line trackage, is 6,295  
miles.

On the lines of its several railroads are more than  
250 incorporated cities and villages, and numerous un-  
incorporated hamlets, and all together, more than one  
thousand railroad stations or sidings where freight and  
merchandise is loaded and unloaded, with numerous  
privately owned general stores where merchandise and



food products, including flour, and all \* the necessities of life, are kept for sale, and sold.

It has 74 flour mills in operation, which are scattered over the various parts of the State, with a capacity varying from 25 to 1800 barrels per day, and a total capacity of 16,720 barrels a day, or 5,000,000 barrels capacity for a year. The mills thus privately owned and operated have the capacity of producing between seven and eight times more flour than the people of North Dakota consume, and a capacity not only to feed all the people of the State, but still have for export to other states or countries, over four million barrels per year.

It has more than 2,000 licensed and privately owned warehouses and elevators located at railroad stations in the several counties of the state, with a total capacity for storing grain, of more than 60,000,000 bushels.

It has 706 state and national banks, with capital stock and surplus ranging from \$10,000 to \$560,000.

It also has a large number of loan and trust companies and numerous loan agencies, specializing in making of loans on farm lands, said individual loan agencies being distributed throughout the state, and in each and every county thereof. It also has a great number of building and loan associations specializing in making loans upon city property.

North Dakota has an area of 40,000,000 acres,

365 more than half of which is unbroken prairie, and used  
for grazing and stock raising.

The principal occupation of the rural population of this state is that of grain growing, dairying and stock raising.

366 That a large proportion of the taxpayers of the State of North Dakota, who are the owners of a large part of the taxable property of the State, are in no manner interested in any of the business enterprises or projects authorized and provided for by the legislative acts here in question.

\* XXIII.

367 That if the State of North Dakota were permitted to engage in the various enterprises, industries and projects hereinbefore referred to, the plaintiffs and the other taxpayers of the state, in whose behalf this suit is brought, will suffer irreparable injury and damage, and will become involved in a multiplicity of suits. That the plaintiffs and said other taxpayers will be denied the equal protection of the law, and will be  
368 deprived of their property without due process of law, all in violation of their rights as citizens of a free government, and in violation of the guaranties of the Fourteenth Amendment to the Constitution of the United States. That they will be denied the protection of Section 4, Article 4, of the Constitution of the United States, guaranteeing to each state and the citizens hereof, a republican form of government. That

the protection of the guaranties of the constitution of the United States, referred to, is now claimed by the plaintiffs in their own behalf, and on behalf of all other taxpayers of the State. That these plaintiffs, and those in whose behalf this suit is prosecuted, have no adequate remedy at law.

## XXIV.

The constitutional amendments and acts of the legislature hereinbefore set forth authorize the defendants in the operation and conduct of the various enterprises provided for in said acts, to incur and create obligations and indebtedness, in addition to the obligations and indebtedness hereinbefore specifically referred to, amounting to millions of dollars, for which indebtedness and obligations the State of North Dakota stands guarantor and for the payment and liquidation of which the property of the plaintiffs, and the other taxpayers of the State of North Dakota may be appropriated.

\* WHEREFORE, and in consideration of which, and inasmuch as plaintiffs and all other taxpayers of the State of North Dakota, on behalf of whom this action is brought, are remediless at or by the strict rules of common law, and are only relievable in a court of equity where matters of this kind are properly cognizable, the plaintiffs file this bill of complaint against said defendants and pray:

373

1.

That the said defendants may be required to make full and true answer to this bill of complaint (but not under oath, answer under oath being hereby expressly waived).

2.

374

That section 182 of the constitution of the State of North Dakota, and all amendments thereto, insofar as the same pretends to or authorizes the said State to issue or guarantee the payment of bonds, issued or guaranteed for the purpose of raising funds, either to capitalize or to maintain and operate either or any of the proposed state-owned utilities, enterprises or business projects provided for in the legislative acts of the Sixteenth Legislative Assembly of the State of North Dakota, described as House Bill 17, House Bill 18, Senate Bill 20 and Senate Bill 19, as hereinbefore and in paragraph 17 set out in full, be adjudged and decreed illegal and void.

375

3.

376

That section 185 of the constitution of the State of North Dakota and all amendments thereto, insofar as the same pretend to or authorizes the said State to engage in any industry, enterprise or business of a private nature, and not within the governmental functions or police power of the State, be adjudged and decreed illegal and void.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as House Bill No. 17, and entitled

"An Act creating the Industrial Commission of North Dakota, authorizing it to conduct and manage on behalf of the State certain utilities, industries, enterprises and business projects, and defining its powers and duties; and making an appropriation therefor"

which said act is fully set out in paragraph 17 of this bill of complaint, in so far as the same pretends to, or authorizes the so-called Industrial Commission thereby, and by the terms of said act created, to engage in, take charge of, control, manage, or in any manner establish, conduct, or operate any utility, industry, enterprise or business project of a private nature and not within the governmental functions or police power of the State, be adjudged illegal and void.

## 5.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as House Bill No. 18, and entitled:

"An Act, declaring the purpose of the State of North Dakota to engage in the banking business and establishing a system of banking under the name of the Bank of North Dakota, operated by the State, and defining the scope and manner of its operation and the powers and duties of the persons charged with its management; making an appropriation therefor; and providing penalties for the violations of certain provisions thereof"

181 which said act is set out in full in paragraph 17 of  
 182 this bill of complaint, be adjudged and decreed as pre-  
 183 tending to and authorizing the said State of North  
 184 Dakota to enter upon and conduct a business project of  
 185 a purely private nature (to-wit: the establishment of  
 186 and carrying on of a system of banking), and that the  
 187 same is not within the provisions of any government-  
 188 al function or police power of the State, and that the  
 189 said legislative act, being House Bill No. 18, and all  
 190 authority pretended to be or given thereunder, be  
 191 adjudged and decreed illegal and void.

\* 6.

(71)

192 That the act of the Sixteenth Legislative Assembly of  
 193 the State of North Dakota, known as House Bill No.  
 194 49, and entitled:

195 "An act providing for the issuing of bonds of  
 196 the State of North Dakota in the sum of two  
 197 million dollars, to be known as "Bonds of North  
 198 Dakota, Bank Series"; prescribing the terms,  
 199 and stating the purposes thereof; providing a tax  
 200 and making other provision for the payment  
 201 thereof; making appropriations for the payment  
 202 of said bonds, and to carry into effect the pro-  
 203 visions of this Act; and declaring this Act to be  
 204 an emergency measure"

205 which said act is set out in full in paragraph 17 of  
 206 this bill of complaint, be adjudged and decreed as  
 207 pretending to and authorizing the said State of North  
 208 Dakota to issue certain bonds in the aggregate sum  
 209 of two million dollars to be used, and the proceeds  
 210 thereof to be used in a purely private business pro-



ject, not within the provisions of any governmental function or police power of the said state, and that said act, being House Bill No. 49, and all authority pretended to be, or granted thereunder or thereby, for the issuance of any bond or bonds of the State of North Dakota, be adjudged and decreed illegal and void.

## 7.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as Senate Bill No. 130, and entitled:

"An Act providing for the issuing of bonds of the State of North Dakota in a sum not exceeding Ten Million Dollars, to be known as "Bonds of North Dakota, Real Estate Series," prescribing the terms and stating the purposes thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal on said bonds, and to carry into effect the provisions of this Act; and declaring this Act to be an emergency measure,"

which act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to, and authorizing the said State of North Dakota to issue certain bonds in the aggregate sum of ten million dollars to be used, and the proceeds thereof to be used in a purely private business project not within the provisions of any governmental \* function or police power of the said State, and that said Act, being Senate Bill No. 130, and all authority pretended to be or granted thereunder and thereby, for the issuance

38 of any bond or bonds of the State of North Dakota, be adjudged and decreed illegal and void.

## 8.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as Senate Bill No. 20, and entitled:

300 "An Act declaring the purpose of the State of North Dakota to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator and flour mill system under the name of North Dakota Mill and Elevator Association operated by the State, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor"

301 which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to and authorizing the said State of North Dakota to engage in a purely private business project or enterprise, to-wit: the business of manufacturing and marketing of farm products, and for the estab-  
 302 lishing of warehouses, elevators and flour mills, either within or without the State, or in foreign countries, and that such business projects or enterprises are not within the provisions of any governmental function or police power of said state, and that said act, being Senate Bill No. 20, and all authority for the establishment, maintenance and conduct of each, any or all of the businesses therein provided for, be adjudged and decreed illegal and void.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as Senate Bill No. 75, and entitled:

\* "An Act providing for the issuing of bonds of the State of North Dakota in a sum not exceeding Five Million Dollars to be known as "Bonds of North Dakota, Mill and Elevator Series"; prescribing the terms and stating the purposes thereof; providing for a tax and making other provisions for the payment thereof; making appropriations and other provisions for the payment of interest and principal of said bonds, and to carry into effect the provisions of this act; and declaring this act to be an emergency measure"

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to, and authorizing the said State of North Dakota to issue certain bonds in the aggregate sum of five million dollars to be used, and the proceeds thereof to be used in a purely private business project, not within the provisions of any governmental function or the police power of the said State, and that said act, being Senate Bill No. 75, and all authority pretended to be or granted thereunder and thereby, for the issuance of any bond or bonds of the State of North Dakota, be adjudged and decreed illegal and void.

That the act of the Sixteenth Legislative Assembly of the State of North Dakota, known as Senate Bill No. 19, and entitled:

397

"An Act declaring the purpose of the State of North Dakota to engage in the enterprise of providing homes for residents of this state, and to that end to establish a business system operated by the State under the name of the Home Building Association of North Dakota, and defining the scope and manner of its operation, and the powers and duties of the persons charged with its management; and making an appropriation therefor,"

398

which said act is set out in full in paragraph 17 of this bill of complaint, be adjudged and decreed as pretending to, and authorizing the State of North Dakota to enter upon, establish and conduct a purely private business project or enterprise, to-wit: the building of homes and loaning of money upon real estate security, and that such business project or enterprise is not within the provisions of any governmental function or police power of the said State, and that said act, being Senate Bill No. 19, and all authority pretended to be or granted thereunder and thereby for the establishment and conduct of the business project or enterprise therein provided for be adjudged and decreed illegal and void.

400

## \* II.

(7)

That the said defendant Obert Olson individually and as State Treasurer of the State of North Dakota be forever enjoined and prohibited by the order, judgment and decree of this court, from preparing or issuing, either or any of the bonds of the State of North Dakota attempted to be, pretended to be, or author-

ized by House Bill No. 49, Senate Bill No. 130 or 401  
Senate Bill No. 75, hereinbefore referred to; and that  
the said defendant Thomas Hall, individually and as  
secretary of state in and for the State of North Da-  
kota, be by the order, judgment and decree of this  
court, forever enjoined and prohibited from attesting  
either or any of the bonds so provided in said bills in  
this paragraph of the prayer mentioned; and that the 402  
said defendants, Carl Kozitsky, individually and as  
Auditor of the State of North Dakota, and the said  
Thomas Hall, individually and as Secretary of State  
of the State of North Dakota, be forever enjoined and  
prohibited by the order, judgment and decree of this  
court, from signing and endorsing upon each, either  
or any of said bonds so attempted to be, pretended to 403  
be, or authorized to be issued as aforesaid, any certi-  
ficates showing that said bonds, or any of them were  
issued pursuant to law and within the debt limit of the  
State; and that the said Lynn J. Frazier individually  
and as Governor of the State of North Dakota, and  
the said Obert Olson individually and as Treasurer 404  
of the State of North Dakota, be forever enjoined and  
prohibited from executing any of the said bonds so  
attempted to be, pretended to be, or authorized to be  
issued by either of said legislative acts herein, and in  
this paragraph of the prayer referred to; and that said  
defendants individually and as officers as aforesaid,  
each and all be forever enjoined and prohibited by the

405 order, judgment and decree of this court, from deliv-  
 ering any bonds so pretended to be or authorized un-  
 der the provisions of each or any of the said acts of  
 the Sixteenth \*Legislative Assembly of the State of  
 North Dakota herein, and in this section of the prayer  
 referred to, to the said Industrial Commission author-  
 406 ized under the provisions of House Bill No. 17 afore-  
 said; and that the said Lynn J. Frazier, Governor of  
 the State of North Dakota, John N. Hagan, Commis-  
 sioner of Agriculture and Labor of the said State,  
 and William Langer, Attorney General of said State,  
 individually and in their official capacity, and as mem-  
 407 bers of the Industrial Commission aforesaid, be for-  
 ever enjoined and prohibited from negotiating, sell-  
 ing, or otherwise disposing of any bond or bonds  
 issued under the provisions of any said act of the Six-  
 teenth Legislative Assembly of the State of North Da-  
 kota as hereinbefore set forth, being House Bill No.  
 18, House Bill No. 49, and Senate Bill No. 75, here-  
 inbefore more particularly referred to.

408 \* 12.

That the appropriations provided for and attempted  
 to be made, or made in and by the provisions of the  
 certain acts of the Sixteenth Legislative Assembly of  
 the State of North Dakota, known as House Bill No.  
 17, House Bill No. 18, House Bill No. 49, Senate Bill  
 No. 130, Senate Bill No. 20, Senate Bill No. 75, and  
 Senate Bill No. 19, which said acts are set out in



full in paragraph 17 of this bill of complaint, be by the order, judgment and decree of this court declared the appropriation of public funds of the State of North Dakota for private use, and illegal and void.

## 13.

That Lynn J. Frazier as Governor of said State, Carl Kozitsky as State Auditor, William Langer as Attorney General, Obert Olson as State Treasurer, and Thomas Hall as Secretary of State, constituting the State Auditing Board, of the said State of North Dakota, individually, and as such officers and members of said Board, be forever enjoined and prohibited by the order, judgment and decree of this court from auditing any claim or demand for a warrant or other character of requisition upon the funds of the State of North Dakota for the payment of any of the appropriations attempted to be made, or made in any or either of the acts of the Sixteenth Legislative Assembly of the State of North Dakota known as House Bill No. 17, House Bill No. 18, House Bill No. 49, Senate Bill No. 130, Senate Bill No. 20, Senate Bill No. 75, and Senate Bill No. 19.

Also that the said defendant Carl Kozitsky, as auditor of the said state of North Dakota, be by the order, judgment and decree of this court, forever enjoined and prohibited from drawing, executing and delivering his warrant or order upon the treasurer of the State of North Dakota, for the payment of any

413 of the funds of the State of North Dakota in payment  
 of any of the funds of the State of North Dakota in  
 payment of any or either of the appropriations made  
 \* as aforesaid in said bills in this paragraph of the (7)  
 prayer enumerated; and that the defendant, Obert  
 Olson as State Treasurer of the said State of North  
 414 Dakota be by the order, judgment and decree of this  
 court forever enjoined and prohibited from paying out  
 of the funds of the said State of North Dakota, any  
 order, warrant, draft or other requisition calling for  
 the payment of any of said funds because of any au-  
 thority, pretended to be given, or given in and by  
 any or either of the said legislative acts in this para-  
 415 graph of this prayer enumerated.

## 14.

That the defendants Lynn J. Frazier, governor, Wil-  
 liam Langer Attorney General, Thomas Hall, Secre-  
 tary of State, Carl Kozitsky, State Auditor, and Min-  
 nie J. Nielson, Superintendent of Public Instruction,  
 constituting the "Board of University and School  
 416 Lands," individually and officially, as officers of the  
 said State of North Dakota, and as said Board of Uni-  
 versity and School Lands, be by the order, judgment  
 and decree of this court forever enjoined and pro-  
 hibited from investing any of the funds of the State  
 of North Dakota realized from the sale of school lands  
 in any bond, or bonds, issued, negotiated or sold un-  
 der the provisions of either or any of the acts of the

Sixteenth Legislative Assembly of the State of North  
 Dakota, known and referred to as House Bill No. 49,  
 Senate Bill No. 130, and Senate Bill No. 75, and that  
 said defendants in this paragraph of this prayer  
 enumerated, individually and as officers of the said  
 State of North Dakota, and members of the said  
 Board of University and School Lands, be, by the  
 order, judgment and decree of this court, forever en-  
 joined and prohibited from placing or depositing any  
 of the funds of the State of North Dakota derived  
 from the sale of school lands of the State of North  
 Dakota in any bank attempted to be, or organized un-  
 der and by virtue of the provisions of the \* act of the  
 Sixteenth Legislative Assembly of the State of North  
 Dakota known and described as House Bill No. 18.

## 15.

That a temporary order be issued against the defend-  
 ants restraining and enjoining them from carrying out  
 or attempting to carry out the provisions of the con-  
 stitutional amendments and acts of the legislature  
 aforesaid during the pendency of this action; and re-  
 straining and enjoining said defendants from doing  
 or performing any of the acts or things complained of  
 herein, during the pendency of this action.

## 16.

That plaintiffs have such other and further relief in  
 the premises as the nature of the case shall require,  
 and to Your Honor shall seem meet and proper.

Plaintiffs further pray that a writ of subpoena be issued directed to said defendants and each of them, commanding them, and each of them to appear and make answer to plaintiff's bill of complaint at a certain time, and to abide the further orders of the Court.

N. C. YOUNG,

J. S. WATSON,

E. T. CONMY,

Of Fargo, N. D.,

TRACY R. BANGS,

PHILIP R. BANGS,

C. J. MURPHY,

T. A. TONER,

Of Grand Forks, N. D.,

*Solicitors for Plaintiffs.*

STATE OF NORTH DAKOTA,

County of Cass, ss.

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WILLIAM JAMES HOWE, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to matters therein stated upon information and belief, and that as to those matters he believes it to be true. 436

WILLIAM JAMES HOWE.

Subscribed and sworn to before me this 29th day of March, 1919.

(SEAL)

E. T. CONMY,  
Notary Public, Cass Co., N. D. 437

STATE OF NORTH DAKOTA,

County of Grand Forks. ss.

JOHN W. SCOTT, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to matters therein stated upon information and belief, and that as to those matters he believes it to be true. 438

JOHN W. SCOTT.

Subscribed and sworn to before me this 31st day of March, 1919.

(SEAL)

H. N. HAMILTON,  
Deputy Clerk, U. S. District Court.